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Managing the inshore marine environment in the marine and coastal access act era

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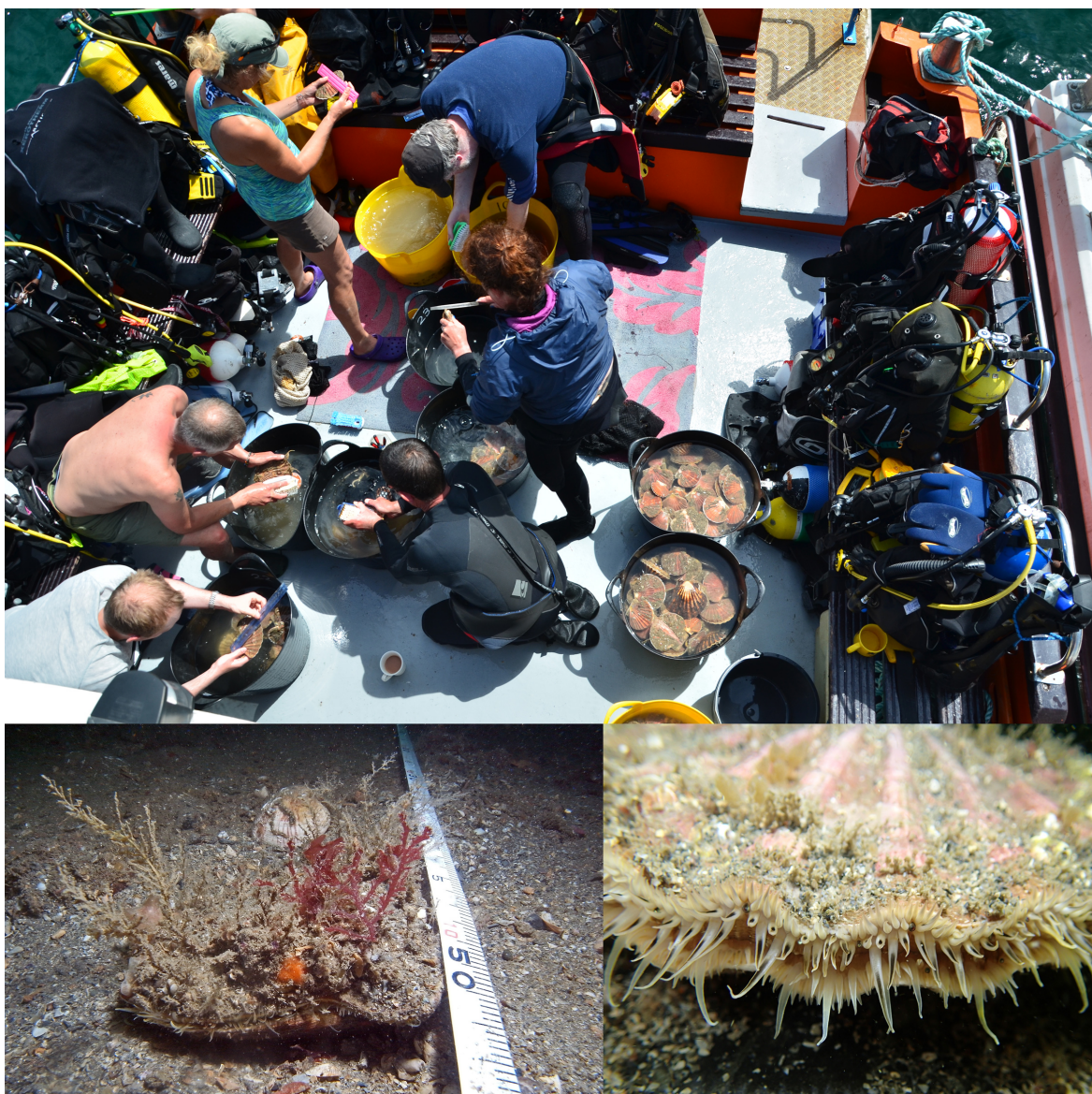
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Managing the inshore marine environment in the Marine and Coastal Access Act era: the Welsh Experience



Terry, A., Lewis, K. and Bullimore, B.

November 2017

Reissued with minor corrections May 2018

Managing the inshore marine environment in the Marine and Coastal Access Act era: the Welsh Experience

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November 2017

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© Blaise Bullimore (top & lower left); Kerry Lewis (lower right)

Managing the inshore marine environment in the Marine and Coastal Access Act era: the Welsh Experience

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Managing the inshore marine environment in the Marine and Coastal Access Act era: the Welsh Experience

EXECUTIVE SUMMARY

1. This study investigated the Welsh Government's approach to inshore fisheries management since commencement of the provisions in the 2009 Marine and Coastal Access Act (MCAA), including the centralisation of management within the Welsh Government rather than establishing a successor to the long established Sea Fisheries Committees, and the impact of the Welsh Government's approach from the perspective of key stakeholders.
2. Information was gathered from semi-structured interviews with key relevant knowledgeable individuals and many secondary sources including minutes of relevant meetings such as those of the Welsh Marine Fishing Advisory Group and Inshore Fisheries Groups; records of National Assembly for Wales' Environment and Sustainability Committee, such as the 2012 inquiry into the post-2010 management regime and subsequent correspondence with the Minister; the archives of the former South Wales Sea Fisheries Committee; Freedom of Information requests to the Welsh Government's Marine and Fisheries Division. The research was hampered by the Welsh Government's lack of transparency and cooperation.
3. The report briefly examines the nature and structure of the Welsh fishing industry and the European, UK and Welsh regulatory and policy frameworks to establish the context for Wales' inshore fisheries management.
4. The experience of centralising marine and fisheries management in Wales has failed to produce the benefits claimed by its proponents before the implementation of the 2009 MCAA.
5. A major weakness is that the Welsh Government (the executive) has failed to use the powers granted to it under MCAA to improve the protection of the marine environment through creating new Marine Conservation Zones, or to engage meaningfully with pre-existing European Marine Site management groups with responsibilities for managing more than fifty per cent of the Welsh inshore area which is, in theory, already under some form of statutory protection.
6. A further weakness is that the Welsh Government has failed to significantly improve the management of sea fisheries.
7. This may be contrasted with the progress in England where Inshore Fisheries and Conservation Authorities have made good progress with respect to their twin roles of managing fishing and protecting the marine environment.
8. Whilst the WG should be held accountable for failing to use the powers granted to them, since 2011, the National Assembly for Wales (the legislature) has failed to use its legislative powers to impose a duty on the Welsh Government to engage more proactively to conserve the Welsh marine environment from the main pressure upon it, namely commercial fishing. This omission was not even addressed in the recent National Assembly for Wales' Climate Change, Environment and Rural Affairs Committee report of its inquiry into the Welsh

Government's approach to Marine Protected Area management "Turning the Tide?". Ironically the inability to direct Sea Fisheries Committees was one of the reasons given by Ministers to dissolve them.

9. Whilst the Welsh Government appears to afford the commercial fishing sector significant political influence, the structures it set up, namely non-statutory Inshore Fishing Groups, were effectively disbanded in 2016 as they were seen to be ineffective.
10. The Welsh Government has, therefore, simultaneously failed to conserve the marine environment effectively and has alienated a large number of commercial fishermen by not using the significant resources it now has available, compared to its predecessors, to monitor adequately fishing activity; it does not enforce compliance with the rules effectively, nor does it genuinely engage with the fishing industry and other marine stakeholders.
11. Whilst the failure to conserve the marine environment effectively is in part due to its main scientific adviser, National Resources Wales, suffering major cuts to its budget which reduced the flow of information needed, the Marine and Fisheries Division appear to have a larger budget than the two Sea Fisheries Committees they replaced, even taking into account the extra duties they took on in the post MCAA period.
12. Many of the issues relating to centrally managing communal resources might have been expected had the decision makers made use of pre-existing evidence from experts in the field such as Elinor Ostrom, or taken into account research undertaken within Wales that outlined the conditions necessary for successful co-management of fisheries.
13. The Welsh Government and its Marine and Fisheries Division do not appear to have created a regime which learns from its mistakes or failures. For example, the suspension of Inshore Fisheries Groups in 2016 does not appear to have resulted in an open review of the reasons for their ineffectiveness, making it more likely that similar mistakes will be repeated in future.

Rheoli'r amgylchedd forol y môr yn ystod cyfnod Deddf y Môr a Mynediad i'r Arfordir: Profiad Cymru

CRYNODEB GWEITHREDOL

1. Ymchwiliodd yr astudiaeth hon i ymagwedd Llywodraeth Cymru at reoli pysgodfeydd arfordirol ers cychwyn darpariaethau Deddf Môr a Mynediad i'r Arfordir (MCAA) 2009, gan gynnwys canoli rheolaeth o fewn Llywodraeth Cymru yn hytrach na sefydlu olynydd i Bwyllgor Pysgodfeydd Môr a oedd wedi ei sefydlu ers amser ac effaith dull Llywodraeth Cymru o safbwynt rhanddeiliaid allweddol.
2. Casglwyd gwybodaeth o gyfweiliadau lled-strwythuredig gydag unigolion allweddol gyda gwybodaeth berthnasol a llawer o ffynonellau eilaidd gan gynnwys cofnodion cyfarfodydd perthnasol megis rhai Grwp Cyngori Pysgodfeydd Morol Cymru a Grwpiau Pysgodfeydd Arfordirol; cofnodion Pwyllgor Amgylchedd a Chynaliadwyedd Cynulliad Cenedlaethol Cymru, megis ymholiad 2012 i'r drefn reoli ôl-2010 a gohebiaeth ddilynol gyda'r Gweinidog; archifau blaenorol Pwyllgor Pysgodfeydd Morol De Cymru; Ceisiadau Rhyddid Gwybodaeth i Is-adran Morol a Physgodfeydd Llywodraeth Cymru. Cafodd yr ymchwil ei rwystro oherwydd diffyg tryloywder a chydweithrediad Llywodraeth Cymru.
3. Mae'r adroddiad yn edrych yn fyr ar natur a strwythur y diwydiant pysgota yng Nghymru, y fframweithiau rheoleiddio a pholisi Ewropeaidd, y Deyrnas Unedig a Chymru i sefydlu cydestun rheoli pysgodfeydd glannau Cymru.
4. Mae'r profiad o ganoli rheolaeth morol a physgodfeydd yng Nghymru wedi methu â chynhyrchu'r budd-daliadau a honir gan ei gynigwyr cyn gweithredu MCAA 2009.
5. Y gwendid mawr yw fod Llywodraeth Cymru (y weithrediaeth) wedi methu â defnyddio'r pwerau a roddwyd iddo o dan MCAA i wella diogelu'r amgylchedd morol drwy greu Parthau Cadwraeth Morol newydd, neu ymgysylltu'n ystyrion â Grwpiau Morol Ewropeaidd sydd eisoes yn bodoli i reoli safleoedd â chyfrifoldebau dros reoli mwy na hanner cant y cant o'r arfordir yng Nghymru sydd, mewn theori, eisoes dan ryw fath o ddiogelwch statudol.
6. Gwendid pellach yw bod Llywodraeth Cymru wedi methu â gwella rheoli pysgodfeydd môr yn sylweddol.
7. Gellid gwrthgyferbynnu hyn â'r cynnydd yn Lloegr lle mae Awdurdodau Pysgodfeydd y Glannau a Chadwraeth wedi gwneud cynnydd da mewn perthynas â'u rolau deuel o reoli pysgota a diogelu'r amgylchedd morol.
8. Er y dylai'r Llywodraeth fod yn atebol am fethu â defnyddio'r pwerau a roddwyd iddynt, ers 2011, mae Cynulliad Cenedlaethol Cymru (y ddeddfwrfa) wedi methu â defnyddio ei bwerau deddfu i osod dyletswydd ar Lywodraeth Cymru i ymgysylltu yn fwy rhagweithiol i warchod amgylchedd morol Cymru o'r prif wasgedd arno, sef pysgota masnachol. Nid oedd hyn wedi cael sylw hyd yn oed yn adroddiad diweddar y Pwyllgor Newid Hinsawdd, yr Amgylchedd a Materion Gwledig Cynulliad Cenedlaethol Cymru yn ei ymholiad i ymagwedd Llywodraeth Cymru tuag at reoli'r Ardal Forol Warchodedig "Turning the Tide". Yn eironig, yr anallu i gyfarwyddo y Pwyllgor Pysgodfeydd Morol oedd un o'r rhesymau a roddwyd gan Weinidogion i'w diddymu.
9. Er bod Llywodraeth Cymru yn ymddangos i fforddio dylanwad gwleidyddol sylweddol i'r sector bysgota masnachol, cafodd y strwythurau a sefydlwyd, sef y Grwpiau Pysgota

Arfordirol anstatudol effeithiol , eu diddymu'n 2016 gan eu bod yn cael eu gweld yn aneffeithiol.

10. Felly, mae Llywodraeth Cymru wedi methu â gwarchod yr amgylchedd forol yn effeithiol ac wedi estroneiddio nifer fawr o bysgotwyr masnachol drwy beidio â defnyddio'r adnoddau sylweddol sydd ganddo ar gael, o'i gymharu â'i ragflaenwyr, i fonitro gweithgarwch pysgota digonol; nid yw'n gorfodi cydymffurfiaeth â'r rheolau'n effeithiol, ac nid yw'n ymwneud yn wirioneddol â'r diwydiant pysgota a rhanddeiliaid morol eraill.
11. Er bod y methiant i warchod yr amgylchedd morol yn effeithiol yn rhannol oherwydd y Prif Ymgynghorydd Gwyddonol, Adnoddau Naturiol Cymru, sy'n dioddef toriadau mawr i'w gyllideb ac felly yn lleihau'r llif gwybodaeth sydd ei angen, mae'n ymddangos fod gan yr Is-adran Forol a Physgodfeydd gyllideb fwy na'r ddau Bwyllgor Pysgodfeydd y Môr a ddisodlwyd, hyd yn oed gan gymryd i ystyriaeth y dyletswyddau ychwanegol a gymerwyd ganddynt yn ystod cyfnod MCAA.
12. Gellid disgwyl i lawer o'r penderfyniadau ynglyn a materion sy'n ymwneud â rheoli adnoddau cymunedol yn ganolog gael eu gwneud pe bai'r gwneuthurwyr penderfyniadau yn defnyddio tystiolaeth a oedd eisoes yn bodoli gan arbenigwyr yn y maes megis Elinor Ostrom, neu ystyried ymchwil a wnaed yng Nghymru a oedd yn amlinellu'r amodau angenrheidiol ar gyfer cyd-reoli pysgodfeydd yn llwyddiannus.
13. Ymddengys nad yw Llywodraeth Cymru a'i Is-adran Forol a Physgodfeydd wedi creu cyfundrefn sy'n dysgu o'i gamgymeriadau neu ei fethiannau. Er enghraifft, ymddengys nad yw atal Grwpiau Pysgodfeydd y Glannau yn 2016 wedi arwain at adolygiad agored o'r rhesymau dros eu diffyg effeithiolrwydd, gan ei gwneud yn fwy tebygol y bydd camgymeriadau tebyg yn cael eu ailadrodd yn y dyfodol.

1. INTRODUCTION

1.1 Inshore fisheries management

On 1 April 2010 the twelve Sea Fisheries Committees (SFCs) around England and Wales were abolished by the 2009 Marine and Coastal Access Act (MCAA) ¹. SFCs had been in existence for over 100 years and were responsible for the management of inshore fisheries, from the coast to a distance of six nautical miles. Constituted under statute ², they comprised a board of fishers and local councillors and appointees from government.

In England, the SFCs were replaced by ten statutory Inshore Fisheries and Conservation Authorities (IFCAs) ³ which gave expanded powers and specifically, wider environmental duties to these new locally-run bodies. However, in Wales, the then Welsh Government (WG) ⁴ replaced SFCs with a new and expanded Fisheries Unit which reported directly to the Minister. This move to centralise power reflected the WG's policy to bring external agencies directly under its control, e.g. the Wales Tourist Board and the Welsh Development Agency ⁵. However, in April 2008 the Marine Fisheries Agency (MFA) fisheries inspectors stationed in Wales had already been transferred into the employment of the WG to create a fisheries enforcement team within the Fisheries Unit of the WG's Rural Affairs Department ^{6 7}.

There had been two SFCs operating in Wales: the South Wales Sea Fisheries Committee (SWSFC) managed the area from Cemaes Head around to Cardiff, and the North West and North Wales Sea Fisheries Committee (NWNWSFC) operated cross border between England and Wales, with the Welsh section running from Cemaes Head to the Dee Estuary. Over time, their remit, responsibilities and resources had been subject to change, but their demise was controversial and

¹ The Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings

² Sea Fisheries Regulation Act 1966

³ Part 6 Marine and Coastal Access Act 2009

⁴ Between the advent of devolution in 1999 and the change of name to Welsh Government in 2011, the executive branch of the devolved institutions in Wales was known as "Welsh Assembly Government". For the sake of simplicity, throughout this report "Welsh Government" (WG) refers to the executive branch and "National Assembly for Wales" (NAW) refers to the legislative branch.

⁵ Rees, G. (2008) Letter responding to consultees on proposed change to the Management of Welsh Inshore Fisheries

⁶ Explanatory Memorandum to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010, 2010 No. 630 (C. 42), Clause 7.5, p3 available at: [http://www.assembly.wales/Laid%20Documents/SUB-LD7965-EM%20-%20The%20Marine%20and%20Coastal%20Access%20Act%202009%20\(Commencement%20No.%201,%20Consequential,%20Transitional%20and%20Sav-11032010-171699/sub-ld7965-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/SUB-LD7965-EM%20-%20The%20Marine%20and%20Coastal%20Access%20Act%202009%20(Commencement%20No.%201,%20Consequential,%20Transitional%20and%20Sav-11032010-171699/sub-ld7965-em-e-English.pdf)
Accessed 1st November 2016.

⁷ In 2013 the Marine and Fisheries Division merged. They are now in the Agriculture, Food and Marine Directorate.

contested, as is documented in section 5.⁸ Following stakeholder engagement, informal, non-statutory Inshore Fisheries Groups were set up, to advise the Fisheries Unit⁹.

The centralisation of inshore fisheries management by the WG was therefore a dramatic shift from the traditional English and Welsh model to a centralised system similar to that found in Scotland.¹⁰ A policy assessment published soon after the MCAA became law, and while fisheries management structures were still in a state of flux, commented: “While in England the century-old local Sea Fisheries Committees are to be replaced with modernised structures, and in Scotland there are efforts to move to a locally-driven management system, in Wales there has been a retreat from local co-management. Not only do the reforms pose ongoing challenges for good governance, not least in the handling of cross-scale interactions and user group participation, but they may also fall short in providing for systematic and full integration of fisheries and marine environmental management”¹¹.

This report aims to identify the impact of WG’s approach from the perspective of key stakeholders from within the commercial and recreational fishing industry, conservation bodies and where possible, government officials with current or former responsibility for fisheries management.

The research for the report was hampered by the lack of transparency and cooperation from the WG. Despite the WG’s commitment to transparency prior to taking over responsibility from SFCs¹², in practice, information regarding key documents such as minutes of Inshore Fisheries Groups (IFGs) and Welsh Marine and Fisheries Advisory Group (WMFAG) minutes, enforcement and prosecution data were only available via Freedom of Information requests. Whilst such information has now become more easily available online this did not occur until six years after the takeover of control which indicates that for much of the previous period, transparency was seriously lacking with respect to Welsh marine and fisheries information and contrasts with the more open regime in Inshore Fisheries and Conservation Authorities (IFCAs) and the former Sea Fisheries Committees (SFCs).

⁸ For example, see: Supplementary memorandum submitted by Countryside Council for Wales (DMB 75), Inshore Fisheries Management Provisions for Wales, to Joint Committee on the Draft Marine Bill, <https://publications.parliament.uk/pa/jt200708/jtselect/jtmarine/159/159we76.htm>

⁹ Inshore Fisheries Groups minutes are at <http://gov.wales/about/foi/responses/2017/Jan17/atisn10990/?lang=en>

¹⁰ In Scotland, inshore fisheries management is centrally controlled under the Inshore Fisheries (Scotland) Act 1984. A pilot was set up in 2009, and between 2013 and 2016 advice was provided by six non-statutory Inshore Fisheries Groups (IFGs). In 2016 it was reduced to five IFGs: <http://ifgs.org.uk/>

¹¹ Phillipson, J. and Symes, D. (2010) Recontextualising inshore fisheries: The changing face of British inshore fisheries management, *Marine Policy*, Vol 34 (6), 1207-1214

¹² Written Statement - Marine and Coastal Access Bill; Inshore Fisheries Management in Wales, Elin Jones, Minister for Rural Affairs, available at: <http://webarchive.nationalarchives.gov.uk/20140404184341/http://wales.gov.uk/about/cabinet/cabinetstatements/2009/090720marine/?lang=en>

1.2 The integration of marine and fisheries in Wales

In early 2013, the Fisheries Unit was merged with the WG's Marine Branch, forming the Marine and Fisheries Division (M&FD) and in November 2013 the WG launched its Marine and Fisheries Strategic Action Plan. Immediately following the launch, officials began briefing stakeholders on a "Marine Transition Programme" which appeared to support development of a holistic approach to marine management, in order to meet the requirements of a series of legislative initiatives that had been introduced in the previous five years¹³. In that respect, two distinct periods may be identified in the post-2010 period.

In June 2013, the Minister announced his "*clear determination to give a greater priority to marine matters*"¹⁴, implying that in the preceding period, the WG had failed to achieve this. At the same time, the Minister set out his vision for fisheries in Wales with a target for achieving them from 2016 to 2018. It had three main themes:

1. Better evidence and understanding
2. Sustainable, local, shared management
3. Increased profitability

In June 2013, the new Minister of Natural Resources and Food accepted the recommendations of the 2013 Environment and Sustainability Committee's Inquiry on Marine Policy. This was partly summarised in the November 2013 Wales Marine and Fisheries Strategic Action Plan's aims "*...to safeguard environmental resources; use them as a driver for economic growth and help to ensure that the Welsh fishing industry receives the level of support it needs in order to grow and become more competitive*", clearly prioritising economic priorities over conservation priorities¹⁵. The creation of the M&F Division was welcomed by members of the fishing industry and conservation groups and was logical given the move to a more holistic system of marine management. The intention of the Minister may be seen from the following statement, which clearly links fisheries to wider marine issues: "*Developing positive policies for sustainable fishing will be better done as part of developing better policies for comprehensive marine governance*"¹⁶. However, members of the fishing industry believed that they were being impeded by: "*...the strong influence that NGOs {non governmental organisations} and other external bodies have on the UK fleet's access to fishing, at both a national and particularly a regional level*"¹⁷, although no evidence was provided to support this statement.

Despite the apparent support shown in the ministerial statement for strong environmental safeguards, supporting the Marine Strategy Framework Directive's target of achieving good environmental status by 2020 and an ecosystem-based approach to marine management, at

¹³ The key pieces of legislation relating to Welsh inshore waters are introduced in section 4 of this report, and a critical analysis of the provisions is offered in sections 6 and 7.

¹⁴ Minister for Natural Resources and Food (June 2013) Marine and Fisheries – Future Direction and Strategic Action Plan: Supporting Document in conjunction with the Ministerial Oral Statement

¹⁵ WG 2013, Wales Marine and Fisheries Strategic Action Plan, p3

¹⁶ Minister for Natural Resources and Food (18/06/2013) Marine and Fisheries – Future Direction and Strategic Action Plan: Supporting Document in conjunction with the Ministerial Oral Statement

¹⁷ Seafish Wales Advisory Committee meeting minutes meeting: 13/01/16, pp 6-7

times, the attitude towards fisheries was more ambiguous. For example, the statement *“I want our fisheries acknowledged as a sustainable and non-damaging activity”*, might be interpreted as either an aspiration or a statement of fact. There was also an acknowledgment that to achieve the vision, there would need to be greater involvement by stakeholders, suggesting that three years into its tenure, the WG had begun to recognise the limits of its own power to manage fisheries and the wider marine environment, but also that the post-2010 management systems had failed to deliver many of their promised and previously assumed benefits.

The period to which this study relates witnessed the introduction of a “Marine Transition Programme” (MTP), though a programme document does not appear to have ever been made public and we have been unable to locate a copy. However, extracts and summary material describing the programme and its workstreams began to appear in stakeholder briefing presentations by WG officials from December 2013¹⁸. Drawing on these presentations, it appears that it was intended to bring marine and fisheries policy together, prioritise the work of the new M&FD to deliver the Strategic Action Plan, and to integrate workstreams both within the new Division and with wider related WG work and policies. Nevertheless, its status, aims and objectives were, and remain, unclear; that is, whether it is an internal work programme or a public-facing process with stakeholder involvement (as distinct from stakeholders being advised as to its progress). Further, its status appears to have evolved over time and its objectives changed.

Despite the apparent importance of the MTP in shaping the WG’s marine work and priorities, it was not until late 2015 that the MTP appeared to have come onto the radar of the National Assembly’s Environment and Sustainability Committee, whilst they were following up the WG’s progress in delivering the recommendations of the Committee’s 2013 report from its marine policy inquiry¹⁹. Whilst the Committee welcomed the MTP in a letter to the then Minister dated 6 October 2015, the Minister considered it necessary to clarify the Committee’s apparent misunderstanding of the MTP’s purpose²⁰.

When we asked for information and policy documents on the objectives and outcomes of the MTP, the WG offered an email with a cursory paragraph in relation to each of its MTP “workstreams”: the Wales National Marine Plan, the MSFD, the Better Fisheries Project and the Marine Protected Areas Project. It declined to provide a link to publicly available information, or any policy documents²¹. At the time of writing, the only reference to the MTP on the WG’s website is on a page titled Stakeholder Engagement, where it is described as providing: *“a flexible*

¹⁸ E.g. PowerPoint presentations: “WG Marine & Fisheries, Marine Programme, Stakeholder brief, 3 December 2013” provided to MCZ Stakeholder Focus Group at the Maldron Hotel Cardiff; “WG Marine & Fisheries, Marine Transition Programme, Wales Marine Strategic Advisory Group (WMSAG), 24 November 2014”

¹⁹

<http://senedd.assembly.wales/documents/s44611/Letter%20to%20the%20Minister%20for%20Natural%20Resources%20-%206%20October%202015.pdf>

²⁰

<http://senedd.assembly.wales/documents/s46162/Response%20from%20the%20Minister%20for%20Natural%20Resources%20-%203%20November%202015.pdf>

²¹ Email from the WG to Kerry Lewis, 17 July 2017

and adaptable change management programme that enables key priority areas for Marine and Fisheries to progress and be delivered”²².

The MTP was ostensibly the programme that brought together all the work of the M&F Division into one coherent process. *“So, it identifies six different key projects—marine planning for instance, marine protected areas, the marine strategy framework directive, and the effective evidence base”^{23 24}*. However, the Welsh Fishermen’s Association (WFA) argued that the process lacked: *“...transparent work programmes with clear delivery timelines”²⁵*. Furthermore, the MTP had no reference to improving the health of marine ecosystems and failed to identify a desired state of restored biodiversity, in contrast to maximising its economic and social potential, thus it lacked balance with respect to the three goals of sustainability and clearly failed to meet the expectations as set out in legislation relating to the management of marine protected areas (MPAs)²⁶, which generally require more rigorous conservation standards to be achieved²⁷.

This report examines the extent to which this vision has been achieved, but also considers issues that preceded the June 2013 ministerial statement which provides the legislative parameters in which the WG must work²⁸. In particular, it has to be asked, does *“giving greater priority to marine matters”* relate mainly to fisheries issues, rather than marine conservation - which has had very little attention in Ministerial announcements? This report begins with an overview of the nature and structure of the Welsh fishing industry, before providing an analysis of the policy and regulatory framework governing the management of inshore waters in Wales and the evidence upon which that is based. It then sets out a detailed assessment of the performance of the post-2010 regime following this analysis, and the findings of the research carried out.

²² <http://gov.wales/topics/environmentcountryside/marineandfisheries/stakeholder-engagement/?lang=en> August 2016

²³ I. Ball, Marine Policy Manager WWF evidence to The Environment and Sustainability Committee, p13, 26/02/2015. Available at: <http://senedd.assembly.wales/documents/s37267/26%20February%202015.pdf> accessed 12/12/2016

²⁴ In November 2016 The MTP contained four broad project areas; 1. Marine Planning (including Marine evidence activities); 2. the Marine Strategy Framework Directive; 3. Better Fisheries (including Sustainable Fisheries and the New Common Fisheries Policy); 4. Marine Protected Areas (including Harbour Porpoise and the Special Protected areas). <http://gov.wales/docs/dra/publications/150618-wales-marine-strategic-advisory-group-terms-of-reference-en.pdf> Accessed 20/06/2017

²⁵ Welsh Fishermen’s Association evidence to The Environment and Sustainability Committee, p17, 26/02/2015. Available at: <http://senedd.assembly.wales/documents/s37267/26%20February%202015.pdf> accessed 12/12/2016

²⁶ Further discussion on types of marine protected area is set out in sections 6 and 7 of this report.

²⁷ I. Ball, Marine Policy Manager WWF evidence to The Environment and Sustainability Committee, p16, 26/02/2015. Available at: <http://senedd.assembly.wales/documents/s37267/26%20February%202015.pdf> accessed 12/12/2016

²⁸ Minister for Natural Resources and Food (June 2013) Marine and Fisheries – Future Direction and Strategic Action Plan: Supporting Document in conjunction with the Ministerial Oral Statement <http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2013/marinefisheries/?lang=en>

2. STUDY METHODOLOGY

A qualitative approach was adopted based upon semi-structured interviews with key individuals identified using a snowball technique and from websites or other sources. Interviews were undertaken face-to-face, by Skype or by telephone. In addition, we made use of secondary sources including minutes of meetings such as the Welsh Marine Fishing Advisory Group (WMFAG), the minutes of Inshore Fishing Groups, Seafish Wales Advisory Committee meeting minutes, relevant minutes of the National Assembly Environment and Sustainability Committee such as the 2012 inquiry into the post-2010 management regime ²⁹ and questions to the Minister by Assembly Members. The archives of the former South Wales Sea Fisheries Committee were also accessed to provide information on enforcement, prosecutions and to compare the quality of information regarding issues relating to fisheries management with post-2010 sources. The final source was via Freedom of Information requests to the Marine and Fisheries Division (M&FD) ³⁰.

All responses from individuals were treated confidentially; information was summarised and anonymised where necessary to protect individual identities (some of which are included in this report as personal communication) other than where views had already been made public, as for example in minutes of meetings. All data was stored to comply with the ethical standards of the University of the West of England. Policy and legislation relevant to the governance and management of Welsh inshore fisheries was examined through critical analysis of the legislative provisions in an applied context, supported by requests for information from public authorities. A comparative assessment of legal provisions relating to governance and management of English inshore waters was also undertaken.

Twenty-five individuals were willing to participate in the research including fishermen's representatives, individual fishermen, recreational angling representatives, former SFC staff, SFC committee members or IFG members, representatives from IFCAs, marine conservationists, independent marine consultants and academics working on marine-related issues. Responses from the WG M&FD and NRW were not forthcoming due to pressure of work in the post-Brexit climate and because it was deemed inappropriate to engage with the project directly.

²⁹ <http://www.assembly.wales/laid%20documents/cr-ld9175%20-%20environment%20and%20sustainability%20committee%20inquiry%20into%20marine%20policy%20in%20wales-22012013-242437/cr-ld9175-e-english.pdf>

³⁰ Minutes of Inshore Fisheries Groups and Welsh Marine Fisheries Advisory Group were only available by FOI when the research commenced. Finalised agreed minutes of both groups are now available at <http://gov.wales/about/foi/responses/2017/Jan17/atisn10990/?lang=en>

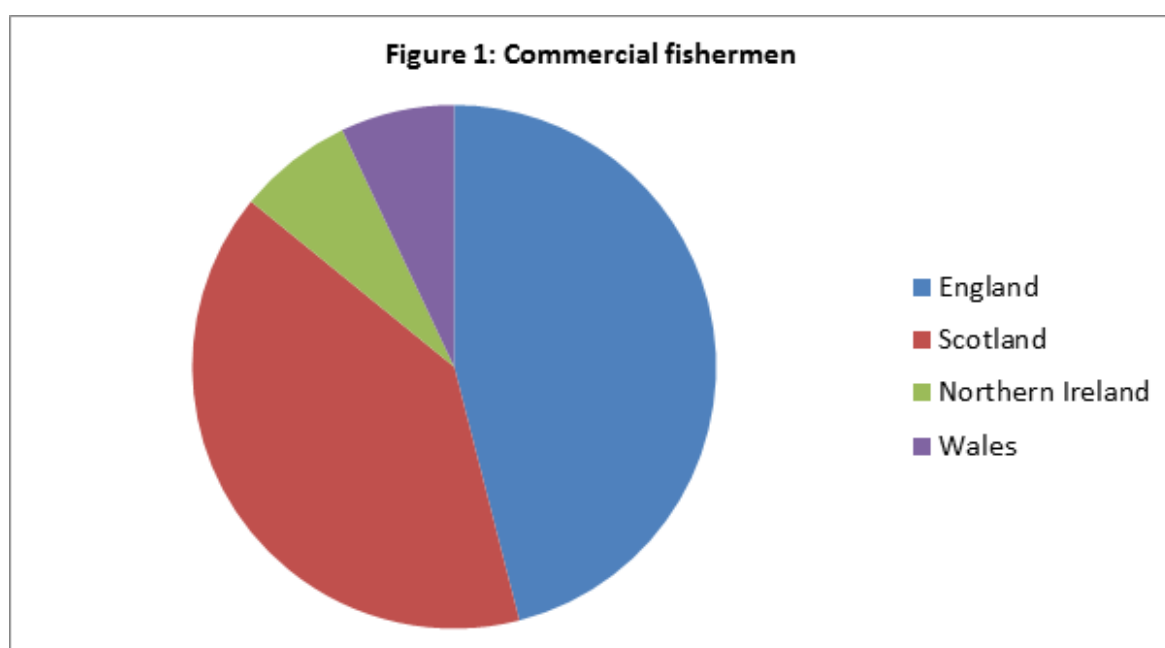
3. THE NATURE AND STRUCTURE OF THE WELSH FISHING INDUSTRY

3.1 Commercial fishing

In 2015, the UK fishing industry had 6,187 fishing vessels compared with 6,716 in 2005, a reduction of eight per cent. Seventy-nine per cent of the fleet comprised 4,863 ten-metre and under vessels and 21 per cent (1,324) over ten metre vessels. Between 2012 and 2015, the number of over ten metre vessels in Wales declined from 39 to 32 vessels (12 per cent decline), while the number of ten-metre and under vessels declined from 440 to 412, a six per cent decline³¹. The numerical dominance of the ten-metre and under part of the Welsh fleet therefore increased from 92 to 93 per cent between 2012 and 2015.

For the UK fleet there were an estimated 12,107 fishermen in 2015, down six per cent since 2005 but an increase of 262 on the previous year. Of these, 5,569 (46 per cent) were based in England, 851 (seven per cent) in Wales, 4,828 (40 per cent) in Scotland and 859 (seven per cent) in Northern Ireland³² (Figure 1).

Figure 1. Proportion of UK commercial fishermen by country MMO 2016



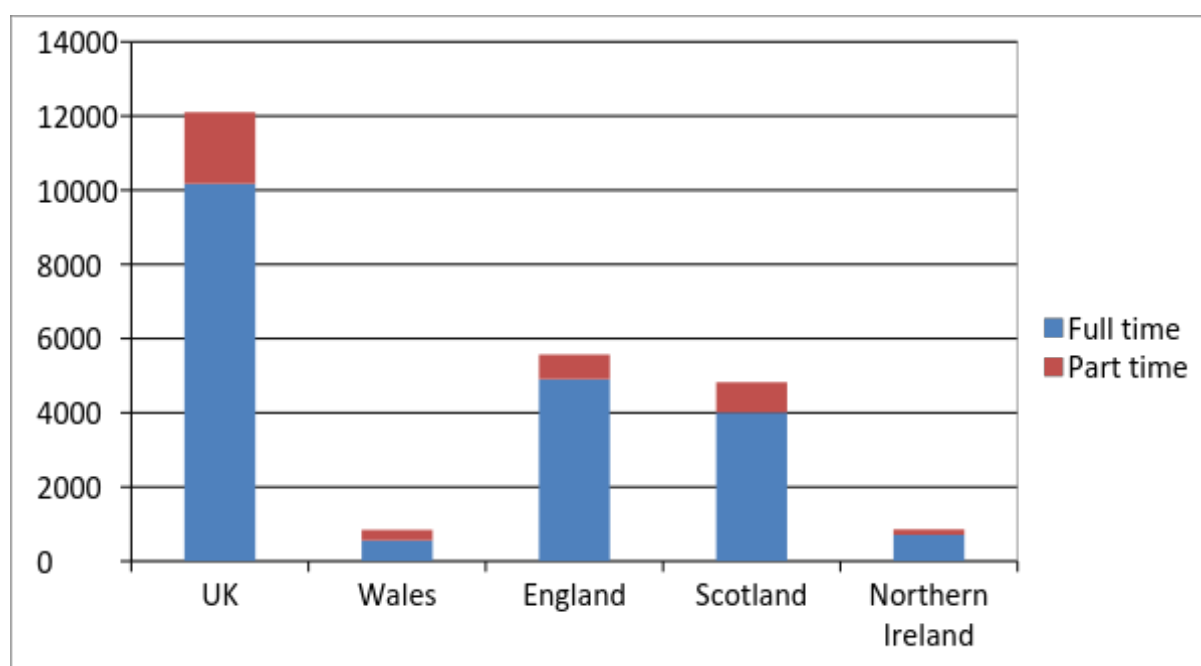
³¹ The < 10 metre fleet had declined a further 6.5 per cent to 385 vessels by 2016:

<https://www.gov.uk/government/collections/uk-vessel-lists>

³² Marine Management Organisation (2016) UK Sea Fisheries Statistics 2015, available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555665/UK_Sea_Fisheries_Statistics_2015_full_report.pdf Accessed 18/12/2016

Figure 2: Full and part-time fishermen within the UK MMO 2016



In 2015, part-time fishermen accounted for 16 per cent of all UK fishermen; two percentage points lower than in 2005. Thirty-four per cent of fishermen on vessels administered in Wales were part-time compared with 12 per cent for vessels administered in England, 17 per cent in Scotland and 18 per cent in Northern Ireland (Figure 2) ³³.

Seven per cent of the UK fleet and seven per cent of its fishermen were registered in Wales. However, Wales had several distinctive features compared to the other UK countries, with the largest percentage of boats below ten metres, compared to its UK neighbours (92 per cent compared to 82 per cent in England, 71 per cent in Scotland and 61 per cent in Northern Ireland). The largest numbers of part-time fishermen were working on vessels registered in Milford Haven. The Welsh industry is therefore dominated numerically by small-scale vessels run by a much larger percentage of part-time fishermen than are found elsewhere in the UK. This reflects the history of the Welsh fishing industry in Wales, including historical overfishing of nearshore waters and lack of investment ³⁴.

Between 2005 and 2015 the number of regular fishermen decreased by three per cent and the number of part-time fishermen decreased by 17 per cent. Over the same period, the number of fishermen on English administered vessels decreased by seven per cent and on vessels administered in Scotland by six per cent. In Northern Ireland fishermen numbers increased by a half but they decreased by a quarter in Wales. Wales therefore stands out in terms of the extent of the decline in fishermen and suggests that the Welsh fishing industry has bigger structural weaknesses than its UK neighbours. These have been highlighted as the poor condition of vessels, poor wages, and the age demographic in the catching sector, all of which impact adversely on

³³ Marine Management Organisation (2016) UK Sea Fisheries Statistics 2015, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555665/UK_Sea_Fisheries_Statistics_2015_full_report.pdf Accessed 18/12/2016

³⁴ McKay, K. D., 1989 A vision of greatness: the history of Milford 1790-1990. Brace Harvatt Associates, Haverfordwest, Dyfed ISBN 0951521209

investment³⁵. However, these explanations do not consider historical overfishing and depletion of fin-fish stocks in the southern Irish and Celtic Seas in the century before and decade following WW II (see, for example, Figure 3) and the consequential long-term shift in fleet structure to one predominantly focussed on and equipped to exploit local shellfisheries.

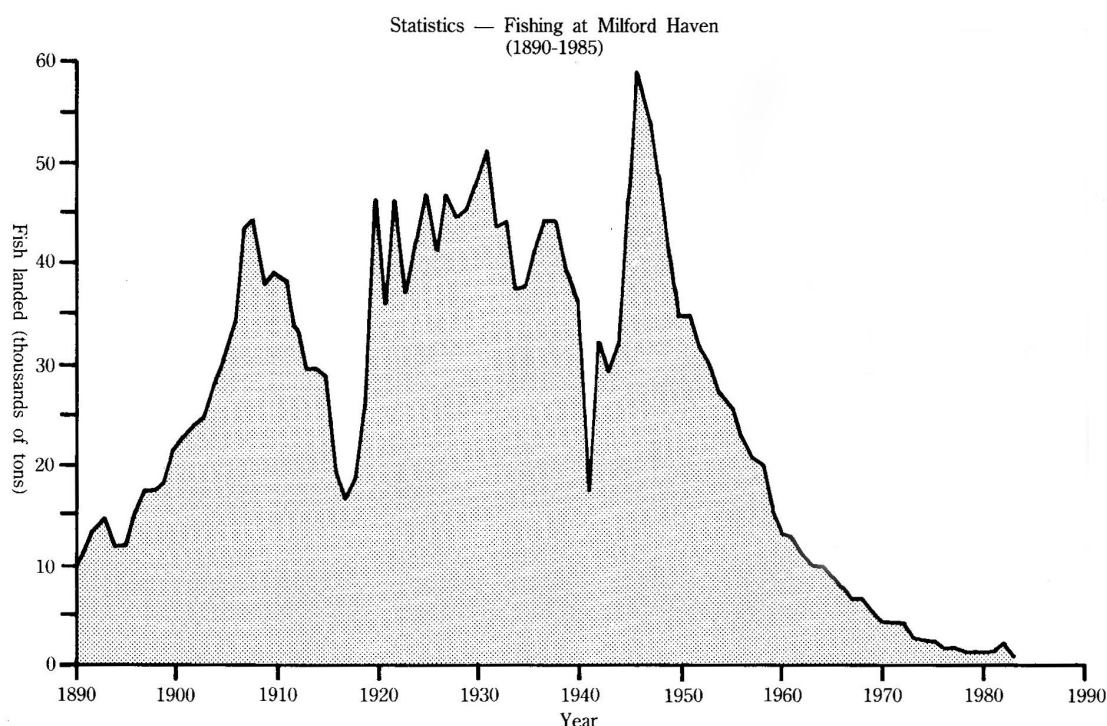


Figure 3. Fish landings at Milford Haven 1890 - 1985 McKay, K D, 1989 A vision of greatness: the history of Milford 1790-1990 *ibid*

The small size of most Welsh fishing vessels prevents access to fishing grounds outside the Welsh inshore fishing region and therefore, alternative sources are not available to them if fish stocks are significantly depleted. Nevertheless, small-scale fishermen may compensate “...by using a wide range of *métiers* targeting a range of species in any one area and between fishing seasons”³⁶. Whilst support is currently available from the EU through the European Maritime and Fisheries Fund (EMFF), this source will no longer be available once the UK has left the EU unless an equivalent scheme replaces it.

Welsh Government’s Annual Business Survey gave an ‘approximate’ Gross Value Added (GVA) for fishing in Wales in 2008 as £13m and £11m in 2009³⁷.

With respect to the type of fish caught, Wales was also quite distinctive from the rest of the UK (Fig. 4) with a very high dependency on shellfish (90 per cent) compared to 29 per cent in England, 14.2 per cent in Scotland and 27 per cent in Northern Ireland. Its total tonnage of all fish

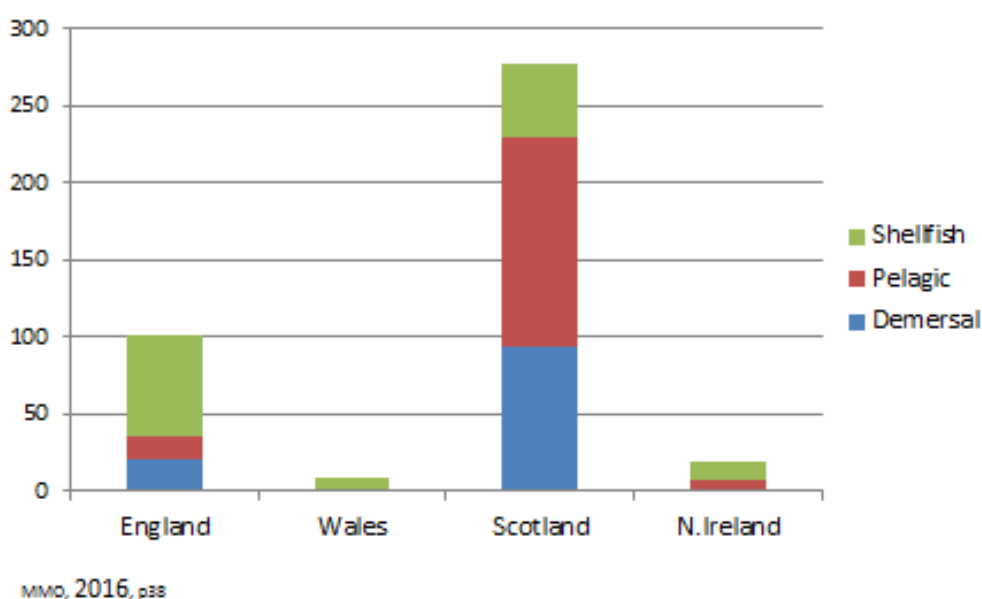
³⁵ Seafish Wales Advisory Committee Meeting minutes, 13/01/16, Aberystwyth, available at: http://www.seafish.org/media/1610414/swac_meeting_minutes_13-01-16_final.pdf Accessed 5/12/16

³⁶ Cambiè, G., Pantin, J.R., Salomonsen, H & Kaiser, M.J. (2015) Economic performance and fishing Strategies of the Welsh coastal fleet. Fisheries & Conservation report No. 43, Bangor University.

³⁷ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-249334>

represented only 1.7 per cent of the total landed by UK registered vessels in 2014, compared to 29 per cent in England, 61.3 per cent in Scotland and eight per cent in Northern Ireland. In 2014 whelks, mussels, queen scallops, scallops and crabs accounted for around 95 per cent of all shellfish landed in Wales, the other main species landed being lobster. Between 2010 and 2014 the weight of landings varied from 26,000 tonnes in 2012 to 13,600 tonnes in 2014 ³⁸. In 2015, the total tonnage landed in Welsh ports had declined further to 11,000 tonnes, of which 9,700 tonnes (88 per cent) was shellfish and 1,300 tonnes (12 per cent) was finfish ³⁹.

Figure 4: Landings of main fish categories into UK by UK vessels (2015)



In 2014, the 1,213 tonnes of freshwater and marine fish were worth £2.8 million (1,213 tonnes) of fish ⁴⁰, and the 10,500 tonnes of shellfish (mainly scallops, whelks and crabs/lobsters) was worth £12.0 million. This included all UK vessels that landed in Wales in 2014 ⁴¹.

Given the very high dependence on smaller vessels (< 10 metres), the Welsh fleet is predominantly targeted at the inshore fishing grounds “...capable of operating a wide range of

³⁸ Camnesa Consulting 2016 Understanding the Welsh Seafood Supply Chain: Executive Summary, funded by Sea Fish Industry Authority in partnership with Milford Haven Port Authority

³⁹ Marine Management Organisation (2016) UK Sea Fisheries Statistics 2015, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555665/UK_Sea_Fisheries_Statistics_2015_full_report.pdf Accessed 18/12/2016

⁴⁰ Mainly seafood

⁴¹ Welsh Government. 2015. Wales' Marine Evidence Report [online]. Available at: <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-planning/other-supporting-evidence/wales-marine-evidence-report/?lang=en>. Cited in Natural Resources Wales. 2016. State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources. Technical Report. Natural Resources Wales. Available at <http://www.naturalresources.wales/media/682376/chapter-2-understanding-drivers-final-for-publication.pdf> Accessed 29/10/2017

fishing gears in seasonal and opportunistic fisheries close to their home ports"⁴². Most fishing effort is within 6 miles of the coastline for a wide range of species including bass, crabs, scallops, lobster, prawns, brill, turbot, sole, plaice, rays, cod and whelks. Many of these species are of high commercial value and WAG's 2008 Wales Fisheries Strategy claimed landings were high quality due to the methods of capture used and short time between capture and landing⁴³.

With respect to a specific sub-sector, in 2015, 99 vessels in North Wales were licensed, and held an entitlement to fish for shellfish (94 under 10m and five over 10m), while in South Wales, 153 vessels were licensed and held an entitlement to fish for shellfish (141 under 10m and 12 over 10m).⁴⁴ In 2013 the value of landings into the ports of North Wales of the three main crustacean species was £667,771, 75 per cent of which was for lobster. However, the Marine Management Organisation does not distinguish what proportion of this was from Welsh vessels compared to vessels from other UK countries. Most of the shellfish landed in Wales are exported live to Europe.⁴⁵

For the purposes of this paper, cockle fisheries are also part of the commercial inshore fisheries sector, otherwise known as the gathering sector. This sector landed an average of 1,756 tonnes per annum in Wales from the Dee, Burry inlet and Three Rivers areas during the period 2011 - 2014.⁴⁶ The aquaculture sector is dominated by mussel farming off the North Wales coast, mainly the Conwy estuary and the Menai Strait. In 2012, nine thousand tonnes of shellfish were farmed in Wales⁴⁷.

The Marine and Fisheries Strategic Action Plan⁴⁸ identified three key fisheries in Wales:-

1. Cockle fisheries: Historically some of the most valuable fisheries in Wales. This is not a quota stock.
2. Crustacean fisheries: These are the mainstay of the Welsh fishing fleet i.e. pot fishing for crab and lobster. These are not generally subject to Total Allowable Catches (TACs) but are subject to minimum landing size under UK law.
3. Bass fisheries: These are important for the South & West Wales fishing fleets and are not currently a quota stock and therefore have no limitations under the EU Common Fisheries Policy Discard Ban. However, the International Council for Exploration of the Sea (the lead

⁴² Pawson, M.G., Pickett, G.D. and Walker, P. (2002) The Coastal Fisheries of England, and Wales, Part IV: A Review of their status, 1999-2001, Sci. Ser. Tech Rep., CEFAS Lowestoft, 116: 83pp.

⁴³ Wales Fisheries Strategy 2008, Food, Fish & Market Development Division, Department for Rural Affairs, Welsh Assembly Government, Cardiff, p12: available at <http://www.fisheries.org.uk/080801walesfisheriesstrategyen.pdf>

⁴⁴ Explanatory Memorandum to the Specified Crustaceans (Prohibition on Fishing, Landing, Sale and Carriage) (Wales) Order 2015 p10, available at: <http://www.assembly.wales/laid%20documents/sub-ld10490-em/sub-ld10490-em-e.pdf> accessed 15/12/2016

⁴⁵ Explanatory Memorandum to the Specified Crustaceans (Prohibition on Fishing, Landing, Sale and Carriage) (Wales) Order 2015 p15, available at: <http://www.assembly.wales/laid%20documents/sub-ld10490-em/sub-ld10490-em-e.pdf> accessed 15/12/2016

⁴⁶ Camnesa Consulting 2016 Understanding the Welsh Seafood Supply Chain: Executive Summary, funded by Sea Fish Industry Authority in partnership with Milford Haven Port Authority

⁴⁷ Camnesa Consulting 2016 Understanding the Welsh Seafood Supply Chain: Executive Summary, funded by Sea Fish Industry Authority in partnership with Milford Haven Port Authority

⁴⁸ Welsh Government, Marine and Fisheries Strategic Action Plan, November 2013

advisory body to the EU on quotas) has recently recommended a significant decrease in the level of bass catch across Europe⁴⁹, although “...a modest increase in netting was secured” by the Cabinet Secretary for Environment and Rural Affairs during the December 2016 EU quota meeting⁵⁰. This has not been welcomed by the Welsh Federation of Sea Anglers (WFSA) who assert that it goes against the scientific evidence.

Since 2004, the Burry Inlet and Three Rivers cockle fisheries have suffered from a cycle of cockle die-back which has, on occasions, led to the complete closure of both fisheries⁵¹. The Dee estuary cockle fishery has also been subject to closure. Bass stocks are also severely depleted.

Consequently, two of the three fisheries identified as being of great importance for the Welsh industry are subject to severe stress; one through mass mortalities, the causes of which are likely to be complex to understand and provide protection against, whilst the bass fishery is due to overfishing.

In 2008 the WG identified approximately 600 businesses involved in the inshore fishing sector, with the fleet working from 33 recognised ports and harbours, plus numerous beaches, coves, estuaries and jetties along the Welsh coastline. The WG commented on the highly fragmented nature of the industry, but argued that there was considerable scope to improve its economic performance through added value via processing, and more focused marketing and promotion. Five ports dominated; Milford Haven, Holyhead, Saundersfoot, Fishguard and Swansea, accounting for between 60 and 80 per cent of all landings during the period 2011-2014⁵². The situation in 2015 of the three largest Welsh ports is shown in Table 1.

TABLE 1 Landings by UK vessels into key Welsh ports: 2015

	Quantity (000s tonnes)				Value (£millions)			
	Demersal	Pelagic	Shellfish	Total	Demersal	Pelagic	Shellfish	Total
Wales								
Holyhead	..	-	2.6	2.6	..	-	2.2	2.2
Saundersfoot	..	-	1.6	1.6	0.1	-	1.5	1.5
Milford Haven	1.0	..	0.4	1.5	2.9	..	0.9	3.9

- means "nil" .. means negligible Source: Fisheries Administrations in the UK⁵³

The top three Welsh ports accounted for 47 per cent of all shellfish landings in Wales while Milford Haven accounted for 77 per cent of all finfish landed in 2015.

⁴⁹ ICES advise that when the precautionary approach is applied, there should be zero catch (commercial and recreational) in 2017. <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2016/2016/bss-47.pdf> accessed 21/12/2016

⁵⁰ <http://gov.wales/newsroom/environmentandcountryside/2016/161214-cabinet-secretary-welcomes-a-strong-and-fair-deal-for-wales-fishing-industry/?lang=en>

⁵¹ The Burry Inlet has been closed for most of the time, or open with extremely small quotas, since 2004

⁵² Camnesa Consulting 2016 Understanding the Welsh Seafood Supply Chain: Executive Summary, funded by Sea Fish Industry Authority in partnership with Milford Haven Port Authority

⁵³ Cited in MMO (2016) UK Fisheries Statistics 2015, p6, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555665/UK_Sea_Fisheries_Statistics_2015_full_report.pdf Accessed 18/12/2016

3.2 Non-commercial sea fishing

The ICES Working Group on Recreational Fisheries Surveys defined Recreational Sea Fishing as *“the capture or attempted capture of living aquatic resources mainly for leisure and / or personal consumption, and covers active fishing methods including line, spear, and hand-gathering and passive fishing methods including nets, traps, pots, and set-lines”*.⁵⁴

Monkman et al (2015)⁵⁵ estimated that recreational sea angling within the Welsh coastal region is on average worth £126.41 million per annum, with each £1 million spent directly by sea anglers supporting a further £500,000 of indirect spending, bringing the total average spend to £189.6 million and this includes the direct and indirect benefits, the latter of which include factors that enhance health and well-being. It excluded non-angling recreational sea fisheries that involved nets and gathering. This supported full-time employment of approximately 1,706 persons with a further 500 FTEs indirectly employed. Fifty-four Welsh-based charter boats operated across Wales within 12 nautical miles of the Welsh coastline⁵⁶. This compares with 851 commercial fishermen registered in Wales of whom 34 per cent (290) were part-time⁵⁷. The full-time employment jobs supported by recreational sea angling are therefore almost four times greater than full time employment in the commercial sector, though this does not include indirect employment in the supply chains supporting the commercial sector.⁵⁸ Sixty-four businesses were involved in the seafood processing and distribution sector in Wales, of which 20 per cent of those that responded employed one full-time person, 45 per cent, two to five, 18 per cent six to ten and 14 per cent 11-25 full time employees. One business employed over 251 full-time employees although it is unclear what percentage of its inputs are supplied from the Welsh fishing fleet. This does not take into account other jobs that support the commercial sector such as boat building, boat repairers and ship chandlers, but these also support the recreational and charter sector.

However, the data suggests that the recreational sector is likely to be as important as the commercial sector in the provision of employment, whilst it is possibly more than ten times greater than the value of commercial finfish and shellfish landings, although this excludes the aquaculture and gathering sectors. However, Monkman et al (2015) do caution that it is difficult

⁵⁴ ICES (2013) Report of the ICES Working Group on Recreational Fisheries Surveys 2013, 22-26 April 2013. Esporles, Spain: ICES

⁵⁵ MONKMAN, G., CAMBIÈ, G., HYDER, K., ARMSTRONG, M., ROBERTS, A. & KAISER, M.J. (2015) Socioeconomic and Spatial Review of Sea Angling in Wales Fisheries and Conservation Report No. 52, Bangor University. Available at: <http://fisheries-conservation.bangor.ac.uk/wales/documents/52.pdf> Accessed 30/01/2017

⁵⁶ MONKMAN, G., CAMBIÈ, G., HYDER, K., ARMSTRONG, M., ROBERTS, A. & KAISER, M.J. (2015) Socioeconomic and Spatial Review of Sea Angling in Wales Fisheries and Conservation Report No. 52, Bangor University.

⁵⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555665/UK_Sea_Fisheries_Statistics_2015_full_report.pdf Accessed 21/01/2017

⁵⁸ Camnesa Consulting 2016 Understanding the Welsh Seafood Supply Chain: Executive Summary, funded by Sea Fish Industry Authority in partnership with Milford Haven Port Authority

to compare the two sectors because “...no comparably robust economic analysis has been undertaken for the value of the commercial fishing sector to the Welsh economy”⁵⁹.

⁵⁹ MONKMAN, G., CAMBIÈ, G., HYDER, K., ARMSTRONG, M., ROBERTS, A. & KAISER, M.J. (2015) Socioeconomic and Spatial Review of Sea Angling in Wales Fisheries and Conservation Report No. 52, Bangor University. pp 15

4. THE POLICY AND REGULATORY FRAMEWORK

“...the marine planning process is established by the Marine and Coastal Access Act 2009... a UK requirement. The strategy framework directive ...is a piece of EU legislation that relates to the environmental condition of our seas. The other thing to mention is that our Well-being of Future Generations (Wales) Act 2015 also puts a responsibility now on public bodies across Wales, or will do from next spring, to work in a much more sustainable, holistic and strategic way, and that will also be an important part of how we work towards meeting our obligations under the directive”

Andrew Slade; Director, Agriculture, Food and Marine, Welsh Government. ⁶⁰

It is notable that the above quotation makes no mention of the Habitats (and Birds) Directive(s), or the marine protected area provisions (or anything else) in the Marine and Coastal Access Act, which suggests a limited and poor understanding by the WG of the range and scope of their obligations.

As noted in the introduction, significant changes to the structure and form of fisheries governance in inshore waters in Wales were made in 2010. These changes took place against a backdrop of multiple legislative and policy drivers, at the EU, central UK and devolved administration levels. This section sets out some of the key legal and policy frameworks relevant to marine environmental governance in Wales. The WG is currently undertaking what it describes as a comprehensive review of environmental and fisheries legislation.

The decision to centralise control of inshore fisheries management in Wales and the provisions of the Marine and Coastal Access Act are discussed in sections 5 and 6 respectively. An overview of Marine Protected Areas is provided in section 7.

4.1 EU framework

4.1.1 *The Nature Directives and the Habitats Regulations*

The EU Birds and Habitats Directives,⁶¹ collectively known as the “Nature Directives”, aim to “contribute towards ensuring bio-diversity” through the conservation of natural habitats and species, by maintaining or restoring at “favourable conservation status”, habitats and species of European importance⁶². To achieve this, they provide for the creation of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) respectively.

SPAs are designated for the protection of certain bird species, which are listed in the Birds Directive, including some species of seabird. SACs are designated for the protection of certain

⁶⁰ Andrew Slade, Director, Agriculture, Food and Marine, Welsh Government giving evidence to The Environment and Sustainability Committee, p18 14/10/2015, available at: <http://senedd.assembly.wales/documents/s45142/14%20October%202015.pdf>

⁶¹ Directive on the conservation of wild birds 79/409/EEC, later 2009/147/EC; Directive on the conservation of natural habitats and of wild fauna and flora 92 /43 /EEC.

⁶² Habitats Directive Article 2.

types of habitats and species listed in the Habitats Directive, and include marine habitats and species. Together the sites form a pan-European network called Natura 2000, and where such a site has a marine element, it is a “European Marine Site” (EMS). The Nature Directives are implemented in England and Wales under the Habitats Regulations.⁶³

Under the Habitats Regulations, the “appropriate authority” is essentially responsible for the designation process.⁶⁴ It must propose a list of sites which fulfil the criteria for designation as a Natura 2000 site, and serve notice on landowners, maintain a register of sites, and so on. The Welsh Ministers are the appropriate authority for Wales.

“Competent authorities” are identified as public bodies “of any description” or persons holding a public office, specifically including the Welsh Ministers.⁶⁵ Both appropriate and competent authorities must exercise their functions to “*secure compliance with the requirements of the Directive*”.⁶⁶

Competent authorities are the decision makers in a mandatory “appropriate assessment” process required to determine whether consent should or should not be granted to developments, licensable activities and plans.⁶⁷ Where a “plan or project” is likely to have a “significant effect” on a *Natura 2000* site, but it is not directly connected with, or necessary to the management of that site, the competent authority must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives. The legislation sets out a detailed consultation process which must be followed, and consent should not normally be given where a “significant effect” is “likely”. In rare circumstances, consent may be given if there are no alternative solutions, and there are imperative reasons of overriding public interest for allowing the plan or project to go ahead, as long as compensatory measures are secured. The list of competent authorities is lengthy, including public bodies and the Welsh Ministers. Who the competent authority is depends on the decision being taken. For example, for most planning applications, the local planning authority is the competent authority; for certain developments of national significance, the Welsh Ministers are the competent authority.

A “relevant authority” is empowered, but not required, to establish a management scheme for EMS, under which their functions (including any power to make byelaws) are to be exercised to secure compliance with the requirements of the Habitats Directive in relation to that site.⁶⁸ The list of relevant authorities is specific and is set out in Regulation 6. It includes Natural Resources (NRW) Wales, but not the Welsh Ministers. However, the Welsh Ministers, as appropriate authority, may direct a relevant authority or authorities as to the establishment or amendment of

⁶³ Conservation of Habitats and Species Regulations 2010, consolidating all amendments to the earlier Conservation (Natural Habitats, &c.) Regulations 1994. At the time of writing further consolidating regulations are expected in November 2017.

⁶⁴ Regulations 10 -15

⁶⁵ Regulation 7

⁶⁶ Regulation 9

⁶⁷ Generally referred to in England & Wales as “Habitats Regulations Assessment”, See Regulations 21 and 61 - 66

⁶⁸ Regulation 36

a management scheme for EMS.⁶⁹ The significance of EMS and the various authorities, in the context of inshore fisheries management, are discussed further in section 7 of this report.

4.1.2 Marine Strategy Framework Directive (MSFD)

The MSFD aims to protect the marine environment within European waters. It requires EU member states to put in place measures to achieve or maintain Good Environmental Status (GES) in their seas by 2020. GES is defined in Article 3 as:

“The environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive”.

The MSFD legally enshrines the ecosystem approach to the management of human activities having an impact on the marine environment, integrating the concepts of environmental protection and sustainable use. This approach has been taken up enthusiastically by the WG, but it has been argued, especially since the demise of the Countryside Council for Wales (CCW), that its approach to “blue growth” and sustainable development, for many an oxymoron, tends to favour economic and social objectives over environmental ones⁷⁰. This leaning towards growth might be interpreted as the driver behind the WG’s October 2016⁷¹ decision to restart scallop dredging in the Cardigan Bay Special Area of Conservation (SAC), and whilst the Welsh Government argues that the decision is based on sound scientific evidence that has been independently verified, the decision remains contested. Significant opposition occurred during the consultation period.⁷² The wording of the consultation document was highly criticised for being ambiguous^{73, 74}, whilst the science has been questioned due to what some consider to be an inappropriate baseline, although it could be argued that the science fitted the questions asked, which were concerned with the impact of scallop dredging on the marine environment, but which did not specify the impact on an undisturbed (by human activity) marine environment. Further discussion of the proposals for the scallop fishery in Cardigan Bay SAC is set out in section 7.3.2 of this report.

The MSFD contains eleven descriptors. Descriptors 1 and 3 are particularly salient to fisheries management.

Descriptor 1 relates to biodiversity, requiring that *“Biological diversity is maintained”* so that *“The quality and occurrence of habitats and the distribution and abundance of species are in line with*

⁶⁹ Regulation 37

⁷⁰ Lewis, K. (2015, 189) The framework for environmental regulation in Wales: Natural Resources Wales speaks with ‘One Voice’ – Has the statutory voice for nature been silenced? *Environmental Law Review*, Vol. 17(3) 189–206

⁷¹ <http://gov.wales/newsroom/environmentandcountryside/2016/161031-new-management-measures-for-scallop-fishing-in-cardigan-bay/?lang=en>

⁷² For example see: <https://www.theguardian.com/environment/georgemonbiot/2015/nov/09/allowing-scallop-dredging-in-strictly-protected-dolphin-reserves-is-madness> Accessed 24/11/2016 and https://www.youtube.com/watch?v=G_RomMV4944 Viewed 29/10/2017

⁷³ <https://www.theguardian.com/environment/2015/nov/26/welsh-dolphin-reserve-consultation-that-switched-no-responses-to-yes> Accessed 24/11/2016

⁷⁴ This criticism was acknowledged as being justifiable by the Minister of Natural Resources

prevailing physiographic, geographic and climatic conditions". However, *"The key to maintaining a good ecological state of biodiversity is to first understand what the natural state is for the various parts of our seas, and then to determine whether the current status is equivalent to, or degraded, relative to natural conditions"*⁷⁵ but is challenging since, particularly after at least a century of intensive fishing effort, it is often difficult to assess the baseline, or what might be termed a natural biodiversity status compared to its current degraded state.

Article 13(4) of the Directive requires member states to include the establishment of *"spatial protection measures"* in their programmes of measures, *"contributing to coherent and representative networks of marine protected areas"* where species and habitats are protected, through legal or other effective means, from activities that are damaging or that cause disturbance to the environment. Activities, which do not have a significant impact on wildlife may be permitted, but other activities such as fishing may be restricted in certain areas, or modified to avoid disturbance to wildlife.⁷⁶

The JNCC describes marine protected areas (MPAs) as *"...a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values"*⁷⁷.

Descriptor 3 covers commercial fish and shellfish and aims to achieve safe biological limits and maximum sustainable yields (MSY) of commercial species. Given the fact that the EU estimates 63 per cent of EU stocks (for which the information is available) are being fished beyond maximum sustainable yield (MSY) and 30 per cent are outside safe biological limits, *"the objective of fishery management is now more ambitious, aiming for sustainability at higher long-term yields"*⁷⁸. In other words, there should be an objective of improving marine ecosystems rather than simply maintaining them at their current degraded levels.

The assessment of Welsh commercial fishing stocks by the WG is more upbeat. In 2015, the Natural Resources Minister stated that *"There is a public perception, sometimes misplaced, that wild capture fisheries are not sustainable. For Welsh fisheries, particularly because a large part is targeted on shellfish, that is much less the case"*⁷⁹. However, with respect to the marine environment, Oxfam reported that Wales was exceeding its environmental limits by 64 percent in terms of ocean health (measured via the percentage of UK fish harvested sustainably)⁸⁰ indicating the extent by which the WG needed to improve its performance with respect to this

⁷⁵ http://ec.europa.eu/environment/marine/good-environmental-status/descriptor-1/index_en.htm
Accessed 23/11/2016

⁷⁶ http://ec.europa.eu/environment/marine/good-environmental-status/descriptor-1/index_en.htm
Accessed 23/11/2016

⁷⁷ <http://jncc.defra.gov.uk/default.aspx?page=6906> Accessed 20/06/2017

⁷⁸ http://ec.europa.eu/environment/marine/good-environmental-status/descriptor-3/index_en.htm
Accessed 23/11/2016

⁷⁹ <http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2015/marinefisheriesactionplan/?lang=en> Accessed 29/10/2017

⁸⁰ Sayers, M. (2015) The Welsh Doughnut: A framework for environmental sustainability and social justice Cambium Advocacy for Oxfam Research Report (March 2015) p9.

indicator. Issues around the sustainability of crawfish of the Llyn Peninsula⁸¹ and the poor state of bass stocks⁸² were also examples of a belief by many fishermen that the resources on which they depended were not being fished sustainably⁸³.

4.1.3 The Common Fisheries Policy

The EU's Common Fisheries Policy (CFP)⁸⁴ was adopted in 1983. Under the CFP, the UK is permitted to restrict access within the 0-6 nautical mile limit to domestic vessels. Within the 6-12 nautical mile limit EU vessels from countries with historic access rights can operate. Between the 12-mile limit and to the middle of the Irish Sea (the border with Ireland) offshore Welsh waters are open to fishing from vessels from all EU Member states. In practice fisheries legislation beyond the six-mile limit is subject to EU arrangements, but within the six nautical mile limit the WG can adopt its own regime as long as the central objectives of the CFP are complied with. These objectives include:

- Long term sustainable management
- The precautionary and ecosystem approaches
- Elimination of discards (unwanted catch)
- Provision of viable commercial conditions
- Designing the economy to fit environmental limits
- Contribution to a fair standard of living for fishers
- Ensuring a fair market
- Promoting fishing and taking into consideration socio-economics for coastal communities

It is clear that the negotiations regarding the UK's withdrawal from the EU may result in changes to the application of the CFP in the UK, but this report confines itself to the current arrangements that are relevant to Welsh inshore waters.

4.2 UK Marine Policy

"Our vision for the marine environment is clean, healthy, safe, productive and biologically diverse oceans and seas. Within one generation we want to have made a real difference."

Safeguarding our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment, 2002⁸⁵

⁸¹ Crawfish were fished to commercial extinction many years ago in Pembrokeshire. See for example Hunter, et al, 1996. Recent studies on the crawfish *Palinurus elephas* in South Wales and Cornwall. JMBA (76) pp 963-983.

⁸² This occurs frequently in most IFG minutes

⁸³ North Wales IFG minutes 30/04/2015 (Fol request)

⁸⁴ Now EU Regulation on the Common Fisheries Policy No 1380/2013, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC

⁸⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69321/pb6187-marine-stewardship-020425.pdf Accessed 29/10/2017

Following consultation in 2008, the UK Government and the devolved administrations published high-level marine objectives for the UK's seas.⁸⁶ These were:

- Achieving a sustainable marine economy
- Ensuring a strong, healthy and just society
- Living within environmental limits
- Promoting good governance
- Using sound science responsibly.

4.2.1 Marine Spatial Planning (MSP)

The UK Marine Policy Statement⁸⁷ (MPS) which followed the High-level Marine Objectives, sets out the current overarching policy for the whole of the UK for the preparation of marine plans and decisions affecting the marine environment, in accordance with the high-level marine objectives. It notes the introduction of a marine planning system which would be forthcoming under the Marine and Coastal Access Act 2009, and requires public authorities taking decisions which affect the marine area to do so in accordance with the MPS. The vision under the MPS remains that as set out in *Safeguarding our Seas* (2002), which identifies marine planning as the means of delivery. It is significant that marine planning authorities should note the UK's aims to ensure:

- A halting and, if possible, a reversal of biodiversity loss with species and habitats operating as a part of healthy, functioning ecosystems; and
- The general acceptance of biodiversity's essential role in enhancing the quality of life, with its conservation becoming a natural consideration in all relevant public, private and non-governmental decisions and policies.⁸⁸

It also sets out the UK administrations' commitment to allowing damaged ecosystems to recover, and the importance of a coherent network of MPAs in contributing to achieving "GES" under the MSFD.

Following the adoption of the MPS, the WG is now under a duty to seek to ensure that marine plans are prepared for all parts of their region where the MPS governs marine planning. The EU Framework Directive for maritime spatial planning⁸⁹ requires Member States to develop their marine plans no later than 31st March 2021 and to review them at least every ten years. The MPS provides a framework to ensure the plans deliver consistency in policy goals and identifies activities that should be prioritised, but does not state, and is not intended to imply, which activities should be prioritised over any others. This gives the planning authorities flexibility, but

⁸⁶ Our seas – a shared resource: High level marine objectives, 2009
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182486/ourseas-2009update.pdf Accessed 29/10/2017

⁸⁷ HM Government, UK Marine Policy Statement, March 2011
<https://www.gov.uk/government/publications/uk-marine-policy-statement> Accessed 29/10/2017

⁸⁸ Paragraph 2.6.1, UK Marine Policy Statement, March 2011

⁸⁹ Directive establishing a framework for maritime spatial planning 2014/89/EU

whilst plans are supposed to promote amongst other things, an ecosystem approach which should ensure that the collective pressure of human activities is kept within the levels compatible with the achievement of good environmental status; that does not compromise the capacity of marine ecosystems to respond to human-induced changes; and that enables the sustainable use of marine goods and services; the flexibility enables planning authorities to prioritise economic over environmental goals which appears to have been the case with the decision in 2016 to reopen the Cardigan Bay SAC to scallop dredging.

The Welsh Ministers are responsible for developing Marine Plans in the Welsh Zone, and at the time of writing, consultation on the Wales National Marine Plan is expected in the autumn of 2017.

4.2.2 Marine Strategy Regulations

The MSFD is transposed into domestic law under the Marine Strategy Regulations 2010 and UK's Marine Strategy sets out the UK delivery framework. The Initial Assessment indicated that all parts of the marine fish community have been impacted by human activity and that improved information is needed for diadromous and highly migratory species,⁹⁰ and that commercial fish stocks are under severe pressure; more than 60 per cent of indicator stocks continue to be harvested at rates that are unsustainable and/or have reduced reproductive capacity.⁹¹ Impacts on seabed habitats are widespread and the Irish Sea is noted as being one of the areas most impacted by human activity and associated pressures.⁹² Part One of the Marine Strategy, the Initial Assessment, sets out key targets and indicators, Part Two the marine monitoring programme and Part Three the UK programme of measures.

4.2.3 Marine and Coastal Access Act 2009

The Marine and Coastal Access Act (MCAA) introduced a new system of marine management in the UK and its provisions cover both the inshore (0-12 miles) and the offshore (12-200 miles) regions. It created the Marine Management Organisation to deliver marine functions in relation to England, and for UK matters which are not devolved, and provides for the preparation of a joint Marine Policy Statement for the UK. MCAA is a wide-ranging instrument covering all aspects of the marine environment: marine planning, licensing, the creation of "Marine Conservation Zones"⁹³, management of inshore fisheries, enforcement powers and coastal access. MCAA does not apply uniformly across the whole of the UK, for example, the arrangements for the management of inshore fisheries are different in the different devolved regions. The Act also created the "Welsh Zone", extending the jurisdiction of the Welsh Ministers to the seas adjacent to Wales, from the inshore out to British fisheries limits. The provisions of MCAA which relate to the management and conservation of inshore waters are considered in further detail in sections 6 and 7 of this report.

⁹⁰ Paragraph 40, UK Marine Strategy Part One: UK Initial Assessment and good Environmental Status, December 2012

⁹¹ Paragraph 48, *ibid*

⁹² Paragraph 45, *ibid*

⁹³ See section 7.1 of this report.

4.3 Welsh framework

4.3.1 *The Natural Environment Framework for Wales*

Environment and fisheries are devolved matters in the devolution arrangement between London and Cardiff, and the devolved institutions in Wales have been active in pursuing policy and legislative change in these areas. In September 2010, the WG published a consultation paper⁹⁴ for developing a “Natural Environment Framework” which would have a *“stronger focus on sustainable land and marine management in Wales and [...] adopt an ecosystems approach”*.⁹⁵ It identified a lack of joined-up decision-making as a contributing factor in Wales’ (and the rest of the world’s) failure to meet its biodiversity targets, and that it had not yet been able to adopt a *“truly integrated approach to the management of our environment which reflects the complexity of the way in which environmental systems interact, the value of the services they provide to society, the pressures posed by our changing climate, and the limits of natural capacity.”*⁹⁶

These proposals led to the creation of Natural Resources Wales (NRW), and subsequently to the passing of key pieces of legislation: the Well-being of Future Generations (Wales) Act and the Environment (Wales) Act.

4.3.2 *Natural Resources Wales*

The creation of NRW merged the statutory functions of Countryside Council for Wales (CCW), Environment Agency Wales (EAW) and Forestry Commission Wales. Hitherto, CCW had been the statutory nature conservation body, and EAW the regulatory body for, *inter alia*, environmental permitting and consenting.

One of NRW’s roles is to act as statutory nature conservation advisor to the WG departments such as the M&FD,⁹⁷ and its responsibility with respect to the marine environment is to advise on marine conservation out to 12 nautical miles. Beyond that, the UK Joint Nature Conservation Committee provides that service. Given the mutual dependency of maintaining a thriving fishing industry and a healthy marine ecosystem, the role of key environmental adviser to the M&FD is of prime importance.

Yet, during the consultation phase prior to the creation of NRW, and since the formal transfer of functions to it in April 2013, the effectiveness of the new body as a guardian of the natural environment has been the subject of concern. Criticism has been made of NRW’s approach to

⁹⁴ Welsh Assembly Government Consultation Document: A Living Wales – a new framework for our environment, our countryside and our seas, 15 September 2010

⁹⁵ *ibid*

⁹⁶ *Ibid*, page 1

⁹⁷ ABPmer, (2016). Assessing Welsh Fishing Activities - Phase 1, Principles and prioritisation report. ABPmer Report No R.2607. A report produced by ABPmer for Welsh Government, October 2016.

addressing potentially conflicting priorities and duties relating to nature conservation,⁹⁸ and the organisation has been subject to ongoing financial cuts and staff losses.⁹⁹

Lewis argues that “the combined effect of the NRW duties appears to be that, for nature conservation functions, the statutory requirements of NRW are less robust than those of CCW.”¹⁰⁰ CCW’s priority and core statutory purpose was to protect and conserve the natural environment. NRW’s general statutory purpose is now to pursue sustainable management of natural resources in relation to Wales, and apply the principles of sustainable management of natural resources in the exercise of its functions,¹⁰¹ thereby introducing elements of sustainable development, including social, economic and cultural factors, rather than focusing solely on environmental protection.

This criticism is particularly relevant to fisheries management, as European Marine Sites designed to protect marine species and ecosystems extended to 35 per cent of Welsh waters until 2016, and 69 per cent since (following the offshore extension of SPAs and the submission of additional SACs for porpoise conservation)¹⁰² and considerable debate occurs over the extent to which they have been adequately protected, especially from the effects of commercial fisheries.

The change to the tenor of NRW’s statutory duties, and the shift away from “conservation” towards “sustainable management of natural resources” is likely to have consequences for the balance between environmental, economic, social and cultural aims of sustainable management objectives.

4.3.3 Well-being of Future Generations (Wales) Act 2015 (WBFGA)

The WBFGA requires decision makers in public bodies to consider the implications of their actions for future generations and in theory fits the need for long-term thinking which satisfies the requirement for conservation of the environment, but which has often proven to be anathema to the short-termism of many politicians.

The WBFGA has been described as “ground-breaking legislation”¹⁰³ which adopts an innovative, beyond silo approach to the formulation, implementation and monitoring of sustainable public policy making [and is] a highly transferable model that regional, national and international

⁹⁸ Lewis, K. (2015) The framework for environmental regulation in Wales: Natural Resources Wales speaks with ‘One Voice’ – Has the statutory voice for nature been silenced? *Environmental Law Review*, Vol. 17(3) 189–206

⁹⁹ Dr Emyr Roberts Chief Executive, Natural Resources Wales, giving evidence to the Environment and Sustainability Committee, p14, 6/05/2015 available at: <http://senedd.assembly.wales/documents/s40098/6%20May%202015.pdf> accessed 13/12/2016

¹⁰⁰ Lewis, K. (2015) The framework for environmental regulation in Wales: Natural Resources Wales speaks with ‘One Voice’ – Has the statutory voice for nature been silenced? *Environmental Law Review*, Vol. 17(3) 189–206 at 196

¹⁰¹ Article 4 Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903), as amended

¹⁰² See <https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/find-protected-areas-of-land-and-seas/marine-protected-areas/?lang=en> and <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-conservation-and-biodiversity/marine-protected-areas/?lang=en> Both accessed 29/10/2017

¹⁰³ Davies, H., The Well-being of Future Generations (Wales) Act 2015: Duties or aspirations?, 2016 ELR Vol 18(1) 41-56

governments and institutions can adapt, implement and utilise in securing future justice for current and future generations.¹⁰⁴

It effectively expands the sustainable development agenda in Wales by extending the existing duty on WG Ministers to promote sustainable development in Wales¹⁰⁵ to the wider public sector, as well as seeking to promote collaboration among public sector and other bodies to work towards meeting the seven Well-being Goals,¹⁰⁶ by taking account of the “five ways of working”.¹⁰⁷ The Well-being Goals, which include the goal to achieve “A Resilient Wales”,¹⁰⁸ are not to be treated as hierarchical, and the aim is to achieve integration of all of the goals, rather than balancing them against each other.

Public bodies¹⁰⁹, including the WG, must carry out sustainable development, which is defined as:

“the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the Well-being Goals”¹¹⁰ and must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs¹¹¹.

TABLE 2: The five ways of working to act in accordance with the sustainable development principle, s5(2) WBFGA	
(a) Balancing short and long-term needs	the importance of balancing short-term needs with the need to safeguard the ability to meet long-term needs, especially where things done to meet short-term needs may have detrimental long-term effect;
(b) Taking an integrated approach	the need to take an integrated approach, by considering how: (i) the body’s well-being objectives may impact upon each of the well-being goals; (ii) the body’s well-being objectives impact upon each other or upon other public bodies’ objectives, in particular where steps taken by the body may contribute to meeting one objective but may be detrimental to meeting another;
(c) Involving others	the importance of involving other persons with an interest in achieving the well-being goals and of ensuring those persons reflect the diversity of the population of: (i) Wales (where the body exercises functions in relation to the whole of Wales), or

¹⁰⁴ FuturePolicy.org <http://www.futurepolicy.org/equity-and-dignity/guardians/wales-well-being-of-future-generations-act/>

¹⁰⁵ S3 WBFGA

¹⁰⁶ S4 WBFGA

¹⁰⁷ S5 WBFGA, see Table 2.

¹⁰⁸ “A Resilient Wales: A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).”, s4 WBFGA

¹⁰⁹ Defined in s6 WBFGA. It also includes, inter alia, local authorities, local health boards, and National Park Authorities and Natural Resources Wales.

¹¹⁰ S2 WBFGA

¹¹¹ S5(1) WBFGA

	(ii) the part of Wales in relation to which the body exercises functions;
(d) Acting in collaboration	how acting in collaboration with any other person (or how different parts of the body acting together) could assist the body to meet its well-being objectives, or assist another body to meet its objectives;
(e) Deploying resources to prevent problems	how deploying resources to prevent problems occurring or getting worse may contribute to meeting the body's well-being objectives, or another body's objectives.

The WBFGA sets out a framework for the delivery of the Well-being Goals by various public bodies based on a series of objectives, assessments and plans. At the national level, the Welsh Ministers have published national indicators, and must set milestones, against which the nation's progress towards the well-being goals will be measured, and reported on annually.¹¹² After the initial cycle, the new "well-being cycle" will effectively start in the year following a general election in Wales, when the new Government will publish its "Future Trends Report"¹¹³ predicting likely future trends in the economic, social, environmental and cultural well-being of Wales. In addition to the obligations imposed on public bodies, the other major change under the WBFGA is the appointment of a Future Generations Commissioner (the Commissioner) whose duty is to promote the sustainable development principle, particularly by acting as a guardian of future generations and their ability to meet their needs.¹¹⁴ The Commissioner must monitor and assess the extent to which public bodies are meeting their own well-being objectives. Following the publication by Welsh Ministers of the Future Trends Report, the Commissioner has one year in which to publish the Future Generations Report, which is to include an assessment of how public bodies should better safeguard the ability of future generations to meet their needs, and take greater account of the long-term impact of the things that they do.¹¹⁵

The progressive approach of the WBFGA is to be welcomed, but its practical impact remains to be seen as the Welsh Ministers and other public bodies implement its requirements over the next few years. It is clear that the well-being goals can be applied directly to many aspects of management and conservation of Welsh inshore fisheries, for both the fishers and the fish. The five ways of working are also relevant – management, marine spatial planning, stakeholder participation and so on. Perhaps the most interesting aspect to watch will be the developing role of the Commissioner.

¹¹² As required by s10 WBFGA

¹¹³ S11 WBFGA

¹¹⁴ Ss17,18

¹¹⁵ S23

4.3.4 Environment (Wales) Act 2016 (EWA)

The Environment (Wales) Act is designed to enable the WG to plan and manage Wales' natural resources in a more proactive, sustainable and joined-up way¹¹⁶. The most significant change to the approach to conservation and management of the natural environment comes in Part 1 of EWA which sets out a new regime for the sustainable management of natural resources in Wales. It also makes some changes to the existing provision about several and regulated fisheries for shellfish and fees for marine licences.

4.3.4.1 Sustainable Management of Natural Resources

The legislation introduces an integrated decision-making process to the management of natural resources, which includes three key elements:

- What is to be managed (natural resources);
- What is sustainable management and its objective (sustainable management of natural resources);
- How to achieve that objective (principles of sustainable management of natural resources).¹¹⁷

Part 1 of EWA creates a new statutory purpose for NRW, sets out the WG's regime for the promotion of the sustainable management of natural resources (SMNR) in Wales, and expands the biodiversity duty for public bodies in Wales. Since May 2016, Natural Resources Wales (NRW) must:

- a) Pursue sustainable management of natural resources in relation to Wales; and
- b) Apply the principles of sustainable management of natural resources. (Table 3)

SMNR means using natural resources in a way and at a rate, and taking other action, that promotes achievement of the "objective", and not taking action that hinders achievement of that objective. The objective of SMNR is linked to the Brundtland definition of sustainable development ((a) below)) and the well-being goals set out in WBFGA:

to maintain and enhance the resilience of ecosystems and the benefits they provide and, in so doing:

- (a) meet the needs of present generations of people without compromising the ability of future generations to meet their needs, and
- (b) contribute to the achievement of the well-being goals [set out in s4 WBFGA].

TABLE 3: The Principles of Sustainable Management of Natural Resources	
a)	manage adaptively, by planning, monitoring, reviewing and, where appropriate, changing action;
b)	consider the appropriate spatial scale for action;

¹¹⁶ <http://gov.wales/topics/environmentcountryside/consmanagement/natural-resources-management/environment-act/?lang=en> Accessed 17/09/2107

¹¹⁷ Welsh Government, Explanatory Memorandum to the Environment (Wales) Bill, May 2015

- c) promote and engage in collaboration and co-operation;
- d) make appropriate arrangements for public participation in decision-making;
- e) take account of all relevant evidence and gather evidence in respect of uncertainties;
- f) take account of the benefits and intrinsic value of natural resources and ecosystems;
- g) take account of the short, medium, and long-term consequences of actions;
- h) take action to prevent significant damage to ecosystems;
- i) take account of the resilience of ecosystems, in particular the following aspects:
 - i. diversity between and within ecosystems;
 - ii. the connections between and within ecosystems;
 - iii. the scale of ecosystems;
 - iv. the condition of ecosystems (including their structure and functioning);
 - v. the adaptability of ecosystems.

EWA does not provide a definition of “ecosystems”, but does define “natural resources” which includes animals, plants and other organisms, i.e. including fish and other marine species.

4.3.4.2 National Natural Resources Policy and Area-based management

SMNR in Wales will be delivered through Area Statements made pursuant to a National Natural Resources Policy (NNRP), which, in turn, is to take the State of Natural Resources Report (SoNaRR)¹¹⁸ as its evidence base. NRW is required to publish SoNaRR every five years, which must include NRW’s assessment of: the extent to which SMNR is being achieved; biodiversity; the main trends and factors affecting and likely to affect the state of natural resources; and any aspects about which NRW considers it does not have enough information to make an assessment.

The NNRP, published by the Welsh Ministers, will set out “general and specific” policies for contributing to achieving SMNR in Wales, together with their views on the key priorities, risks and opportunities, including what they think should be done in relation to climate change and biodiversity, and anything else they consider relevant to achieving SMNR in Wales. NRW is required to publish area statements for the whole of Wales to facilitate implementation of the NNRP. Area statements must be kept under review and can be revised at any time. Although not explicitly stated on the face of the EWA, it is anticipated that local well-being plans under WBFGA and area statements under EWA may feed into each other. NRW is involved in development of both sets of plans and must consider whether other plans or strategies should be incorporated into the area statement and vice versa.

Public authorities in Wales must also seek to maintain and enhance biodiversity and promote the resilience of ecosystems, and in doing so, must take account of the resilience of ecosystems. This

¹¹⁸ The first SoNaRR was published in September 2016. <https://naturalresources.wales/evidence-and-data/research-and-reports/the-state-of-natural-resources-report-assessment-of-the-sustainable-management-of-natural-resources/?lang=en>

duty applies to the Welsh Ministers, who are also required to have regard to the Convention on Biological Diversity in complying with the duty. The Welsh Ministers are also responsible for publishing the “biodiversity list” - a list of living organisms and types of habitat which in their opinion are of principal importance to maintain and enhance biodiversity in Wales¹¹⁹. In preparing the list the Welsh Ministers must consult with NRW and must apply the principle of SMNR. Once published, the Welsh Ministers take all reasonable steps to maintain and enhance the species and habitats on the list, and encourage others to do so. However, the habitats and species on the biodiversity lists are, almost entirely, already encompassed by one or more existing UK national conservation measures, and most examples of these features should already enjoy some measure of protection. Nevertheless, any further benefit which accrues from such ‘double-badging’ must be welcomed.

¹¹⁹ Nineteen priority habitats and ten species of fish in the marine environment - though none are “commercially important”: See: <https://www.biodiversitywales.org.uk/Environment-Wales-Bill>

5. CENTRALISATION OF INSHORE FISHERIES MANAGEMENT IN WALES

5.1 Inshore waters fisheries management

Inshore waters up to six nautical miles from the coast fall outside the scope of the EU Common Fisheries Policy. Under the Sea Fisheries Regulation Act 1966, which consolidated the provisions of numerous fisheries regulation Acts dating from 1888, the inshore fisheries around the coast of England and Wales had been managed and enforced by twelve Sea Fisheries Committees (initially established in 1888), which had powers to make byelaws to restrict or prohibit fishing, taking of fish, and methods of fishing, as well as regulating fisheries for shellfish.¹²⁰ SFCs had the power to appoint fishery officers who had enforcement powers against vessels involved in sea fishing.¹²¹ The byelaw-making powers were subject to central government approval, and also EU approval to ensure compatibility with European management measures.

Although SFCs had been operating broadly successfully for over 100 years, the aim of a 2004 review of marine fisheries and environmental enforcement, the ‘Bradley review’¹²² was to “recommend options for the most effective organisation of enforcement to meet conservation objectives and the long-term needs of the fishing industry” in England and Wales. It noted that “local control and stakeholder involvement in Sea Fisheries Committees is a critical factor”¹²³ and broadly concluded that there was still a place for such committees, albeit in need of modernisation¹²⁴ and development in terms of their functions – to be reflected in a name change such as “Inshore Fisheries and Environmental Managers”.¹²⁵ In its proposals for restructuring the geographical jurisdictions of the existing SFCs, the report recommended a single SFC for Wales.¹²⁶

Subsequently, on 3 April 2008, the UK Government published the draft Marine Bill which addressed several key relevant areas: inshore fisheries management, marine conservation zones, and marine spatial planning, as well as coastal access for recreational purposes. During the passage of the Marine Bill, WAG put forward its own agenda for the management of inshore fisheries in Wales.¹²⁷

5.2 2008 proposal for future management and enforcement of sea fisheries in Welsh waters

In June 2008, the WG wrote to “stakeholders” seeking their views on “A Proposal for the Future Management and Enforcement of Sea Fisheries in Welsh Waters”¹²⁸ and requesting responses by

¹²⁰ S5 Sea Fisheries Regulation Act 1966

¹²¹ S10 Sea Fisheries Regulation Act 1966

¹²² Review of Marine Fisheries and Environmental Enforcement, DEFRA, 2004

¹²³ para 6.5, *ibid*

¹²⁴ para 6.2, *ibid*

¹²⁵ para 6.15, *ibid*

¹²⁶ A13.13, *ibid*

¹²⁷ Note that these proposals were made before the changes made under the Natural Environment Framework outlined in section 4.2 of this report.

¹²⁸ Letter from Department for Rural Affairs Welsh Assembly Government to Stakeholders, dated 9 June 2008. See Appendix 1

4 August 2008. The WAG proposal came on the heels of the draft Marine Bill, which included proposals for the new “Welsh Zone”, extending the geographical extent of WAG functions for fisheries management and enforcement. WAG’s proposal focused on the future of Sea Fisheries Committees and the management of inshore fisheries, and highlighted four key areas for consideration:

- the purpose and duties of inshore fisheries management and the jurisdiction within which management and enforcement of fisheries should operate;
- the powers of inshore fisheries management bodies to make and enforce local rules in the form of byelaws;
- the institutional options for future inshore fisheries management bodies; and
- the degree of supervision which should be exercised over those bodies.

The proposal presented three options, with the pros and cons of each option summarised in a table of bullet points. The options under consideration were:

- Option 1 - Modernise SFCs and give some role of supervision to central government whilst retaining local input to decision making.
- Option 2 - Abolish SFCs and transfer responsibility for inshore fisheries management in Wales to the EA.
- Option 3 - Bring the function in-house to create an all Wales fisheries management and enforcement body.

By contrast, the consultation letter noted, DEFRA had decided “...to strengthen SFCs by giving them clear terms of reference and revised strengthened powers to do the job. The proposal in the Marine and Coastal Access Bill, currently out to consultation, is to remove the 1966 Act and replace with new powers and obligations through the Marine Bill to create Inshore Fisheries and Conservation Authorities.”¹²⁹ This option was not included in the WG consultation. The WG argued that “...the aim of one management and enforcement body is far more appropriate and attainable than in England” because there was only one fishing fleet in Wales, compared to separate offshore and inshore fleets in England, which, it was argued, would require two different management and enforcement regimes.

Surprisingly, the consultation letter made no reference to the findings of the Bradley review, nor did it offer any further, detailed rationale for the options it was presenting.

Many respondents to the WAG consultation letter voiced concerns over the proposals, including the following objections:¹³⁰

- A reduction in stakeholder involvement leading to a loss in transparency in decision making.
- The undermining of the long-standing integrated, co-management and stakeholder involvement that was responsive to swiftly changing local circumstances.

¹²⁹ Letter from Department for Rural Affairs Welsh Assembly Government to Stakeholders, dated 9 June 2008

¹³⁰ Symes, D. and Phillipson, J. (2009) Ocean Fiefdom, Agenda Spring 2009

- The undermining of the ability to create new regulations and byelaws that were relevant to local circumstances.
- The undermining of the ability to enforce such byelaws by officers who had expert local knowledge of the marine environments and the fishing community that used it.
- The likelihood that a centralised system would be more expensive, but little if any research had been undertaken to identify the impact of such a change on the total cost of inshore fisheries management.
- Lack of clarity in the transfer of duties from SFCs to the Welsh Minister to collect fisheries data.
- Absence of a clear duty to manage fisheries in a sustainable manner or to promote conservation objectives in Welsh inshore waters.
- A lack of fisheries expertise in the newly formed Welsh Assembly Government fisheries policy group. This was illustrated with respect to the scallop fishery by the fact that the Minister had asked the NW&NWSFC to close the rest of the district out to six miles, but either she or her officials did not realise that most scalloping was taking place outside six miles.
- Uncertainty around whether the resources for enforcement would be sufficient to enable the new fisheries authority to manage outside the traditional SFC limit of six miles, when it was to the 12-mile limit, or even more so if it extended to the median line.
- Substantial investment would be necessary in a larger fisheries protection vessel (FPV) if enforcement duties were to be extended beyond the six mile limit, though the Minister of Rural Affairs stated that the pre-existing arrangement with the Royal Navy for enforcement beyond the six mile limit would be continued.
- The planning framework that underpinned the duties of IFCA did not seem to be transferred clearly in Wales: “...it does not seem that the Minister in Wales will have a **duty** to manage fisheries sustainably or to further the conservation objectives of protected sites in Welsh waters”.¹³¹
- The new structure would be more remote from local communities and fishermen because there would be fewer opportunities for local councillors to be represented. This was particularly true for inter-tidal fisheries where byelaws were flexible. “We have discretions within our byelaws, and there is no certainty yet that the Assembly Government, through its Orders, will have that flexibility... to allow decisions to be taken, particularly in conservation areas, and allow the discretion to be exercised will involve local knowledge and scientific advice, and the decision being put in place very quickly. I personally have difficulty seeing how a centralised model can deliver that”¹³².
- Centralisation of control might lead to those with local knowledge, whether fisheries officers or fishermen becoming more marginalised from the decision-making process.

¹³¹ Dr Stephen Atkins, Chief Executive, North Western and North Wales Sea Fisheries Committee giving evidence to The National Assembly for Wales Sustainability Committee, 26 February 2009 available at: [http://www.assembly.wales/Committee%20Documents/SC\(3\)-04-09%20%20Transcript%20\(PDF,%20198kb\)-26022009-119847/sc20090226qv-Cymraeg.pdf](http://www.assembly.wales/Committee%20Documents/SC(3)-04-09%20%20Transcript%20(PDF,%20198kb)-26022009-119847/sc20090226qv-Cymraeg.pdf)

¹³² Mr Phil Coates, Director SWSFC giving evidence to The National Assembly for Wales Sustainability Committee, 26 February 2009 available at: [http://www.assembly.wales/Committee%20Documents/SC\(3\)-04-09%20%20Transcript%20\(PDF,%20198kb\)-26022009-119847/sc20090226qv-Cymraeg.pdf](http://www.assembly.wales/Committee%20Documents/SC(3)-04-09%20%20Transcript%20(PDF,%20198kb)-26022009-119847/sc20090226qv-Cymraeg.pdf)

- The decision to change the management system had been taken before detailed discussion of how the new system would be delivered, such as the number and type of FPVs and how engagement would take place with stakeholders.
- The fact that reaching a balance between competing viewpoints, such as fisheries or increased conservation, might be difficult at a WG level when compared to a more localised level, because in the latter, membership of the committee was both more engaged with and understanding of issues, because they had normally been in post for longer and therefore had the institutional memory to identify those management decisions which worked, compared to those which did not. *“The same members sit around the table for a period of office of years on end, and spend hours debating and being involved in the debate with CCW—we have conservationists and scientists on the group—before putting in place management actions and adjusting them. I am not sure how it can work in the same way within future Assembly operations”*.¹³³
- Other issues highlighted to be addressed were the need for the newly formed WG Fisheries Division to liaise closely with the two bordering IFCAS in Liverpool Bay and the Bristol Channel respectively to ensure that their byelaws meshed, and that the same regulations be applied on both sides of the border to ensure that fishermen were less likely to transgress when fishing near the line and to aid enforcement.

In response to these detailed objections, the WG’s post consultation response letter to consultees identified six broad objections to the proposed change in fisheries management¹³⁴:

- Resources;
- Legislation;
- Expertise/Stakeholder engagement;
- Why not adopt the IFCA model?
- Lack of clarity with respect to the organisation of the new structure;
- Issues with the consultation process.

With respect to resources, the WG argued that centralisation would eventually result in cost savings from increased efficiency and avoidance of duplication. It also argued that enforcement would not be affected. Legislative concerns were dismissed, or set aside for further consideration, for example with reference to Regulating Orders. With respect to expertise, it was hoped that those SFC staff that wished to transfer would do so; however, the knowledge and expertise of the staff who did transfer appears to have been marginalised. With respect to stakeholder engagement, an Advisory Group would be set up, consisting of fishermen, environmental interests, local authorities and other relevant stakeholders. The IFCA model was not considered

¹³³ Mr Phil Coates, Director SWSFC giving evidence to The National Assembly for Wales Sustainability Committee, 26 February 2009 available at: [http://www.assembly.wales/Committee%20Documents/SC\(3\)-04-09%20%20Transcript%20\(PDF,%20198kb\)-26022009-119847/sc20090226qv-Cymraeg.pdf](http://www.assembly.wales/Committee%20Documents/SC(3)-04-09%20%20Transcript%20(PDF,%20198kb)-26022009-119847/sc20090226qv-Cymraeg.pdf)

¹³⁴ Rees, G. (2008) Letter responding to consultees on proposed change to the Management of Welsh Inshore Fisheries: see Appendix 2 http://www.webarchive.org.uk/wayback/archive/20111004153218/http://www.swsfc.org.uk/pdf_docs/WAG%20Review%20response%20.pdf Accessed 16/12/2016

suitable because of negative feedback from Local Authorities¹³⁵. In addition, because inshore fishing made up a much bigger percentage of the Welsh fishing industry than was the case in England, the WG argued that it needed to assume more direct powers over it.

With respect to the organisation of the proposed management regime, several issues raised were dismissed.

First, a number of respondents asked whether, if fisheries management were centralised, the WG would be able to contribute to the management of European Marine Sites. The concern was that, as the WG was not a “Relevant Authority” under the Habitats Regulations,¹³⁶ it may not be able to sit on the “Relevant Authority Groups” which were informally convened to establish management plans.¹³⁷ The WG’s response was succinctly set out in its “summary of objections”: “*There is no reason why [the WG] could not be a member of these groups*”¹³⁸. In practice, WG fisheries have failed to engage with European Marine Site management groups and this issue is examined in more detail in section 7.3 of this report.

Secondly, it was expected that the proposed new fisheries department (option 3) would be a single point of contact for fishermen and therefore seen as a bonus for them after the change had occurred. However, details on how fishermen were to access the unit were a matter for future consultation and fishermen who have taken part in this research emphasise the difficulties they have when attempting to discuss issues with the Fisheries Unit after its establishment.

It was acknowledged that the consultation paper on whether to enable the WAG to manage fisheries had been lacking in detail, the consultation process had been shorter than usual, and the changes had gone ahead despite not only the SFCs, but also the majority of fishermen who responded, opposing the plans to centralise management powers. Despite this formidable opposition, the WG chose to follow its preferred option (3) and the whole consultation exercise might in retrospect be considered as a cosmetic exercise in the face of a *fait accompli*.

It is understandable that SFC officials would be sceptical of radical changes, and this paper seeks to understand whether the anxieties expressed by SFC officials and others have manifested themselves since 2010. Understandably, the WG was upbeat over its ability to take over management duties as set out below.

The WG argued that the move would create a more holistic approach to fisheries management by combining the existing expertise from the SFCs with the extra resources available from the WG.

¹³⁵ The majority of Local Authorities which responded to the consultation supported the WG proposal; 7 in support, 4 against. (SWSFC Member LAs: 3 for, 1 against, NWNWSFC Member LAs: 2 for, 2 against, other LAs: 2 for, 1 against). Rees, G. (2008) Letter responding to consultees on proposed change to the Management of Welsh Inshore Fisheries available at: http://www.webarchive.org.uk/wayback/archive/20111004153218/http://www.swsfc.org.uk/pdf_docs/WAG%20Review%20response%20.pdf Accessed 16/12/2012

¹³⁶ See sections 4.1.1 and 7.3 of this report.

¹³⁷ See Appendix 2 for detailed responses to WG proposals

¹³⁸ Rees, G. (2008) Letter responding to consultees on proposed change to the Management of Welsh Inshore Fisheries: see Appendix 3
http://www.webarchive.org.uk/wayback/archive/20111004153218/http://www.swsfc.org.uk/pdf_docs/WAG%20Review%20response%20.pdf Accessed 16/12/2012

Amongst other reasons given for a more centralised approach, the following stand out; first it needed more control over inshore fisheries management and enforcement to ensure EU obligations were met; second, in England, inshore fisheries made up a small part of the overall industry, whereas in Wales the inshore fisheries were the major part of the industry; third, given the fact that the majority of local authorities did not support the IFCA model, it would be difficult to introduce them. In addition, if IFCA's were to be introduced, the WG emphasised it would wish for close control of them, even with stakeholder involvement and the setting up of regional enforcement offices, so it made sense to bypass that tier of management and to control fisheries management directly.¹³⁹

The WG also expected that in-house management would ensure a standardised level of service and a simplified management regime that would be easier for users to understand,¹⁴⁰ although it had been argued that *"One size management will not fit all. This is particularly true for the shore based fisheries and for most net or boat commercial inshore fisheries"*,¹⁴¹ both of which dominate the Welsh inshore fishing industry; this point was only acknowledged by the Minister in March 2015 *"... fisheries legislation is not always as flexible and up-to-date as it might be"*.¹⁴²

The issue of openness was also emphasised. In July 2009, the Minister for Rural Affairs stated that *"...I have now made a commitment to report annually to the Assembly on the exercise of my fisheries functions. I believe this will provide greater transparency in the way that we manage fisheries in Wales..."*¹⁴³

The Marine and Coastal Access Act (MCAA) was granted royal assent in 2009, allowing the WG to implement its proposals. The passage of the Marine Bill and the effect of the provisions in MCAA are examined in further detail in section 6 and the new management regime adopted for Welsh inshore fisheries is discussed in section 9.

¹³⁹ Rees, G. (2008) Letter responding to consultees on proposed change to the Management of Welsh Inshore Fisheries see: Appendix 3
http://www.webarchive.org.uk/wayback/archive/20111004153218/http://www.swsfc.org.uk/pdf_docs/WAG%20Review%20response%20.pdf Accessed 16/12/2012

¹⁴⁰ Explanatory Memorandum to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010, 2010 No. 630 (C. 42), Clauses 7.6;7.7, p3 available at: [http://www.assembly.wales/Laid%20Documents/SUB-LD7965-EM%20-%20The%20Marine%20and%20Coastal%20Access%20Act%202009%20\(Commencement%20No.%201,%20Consequential,%20Transitional%20and%20Sav-11032010-171699/sub-ld7965-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/SUB-LD7965-EM%20-%20The%20Marine%20and%20Coastal%20Access%20Act%202009%20(Commencement%20No.%201,%20Consequential,%20Transitional%20and%20Sav-11032010-171699/sub-ld7965-em-e-English.pdf)
 Accessed 1st November 2016.

¹⁴¹ Winterbottom, P. (2006) Chief Executive, The Association of Sea Fisheries Committees of England and Wales, Preliminary Paper to the Welsh Assembly Government, Fisheries Policy Branch dated 7/11/2006

¹⁴² Carl Sergeant, Minister for Natural Resources, Written Statement - Update on the Marine and Fisheries Strategic Action Plan - March 2015.
<http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2015/marinefisheriesactionplan/?lang=en> Accessed 29/10/2017

¹⁴³ Written Statement - Marine and Coastal Access Bill; Inshore Fisheries Management in Wales, Elin Jones, Minister for Rural Affairs, available at:
<http://webarchive.nationalarchives.gov.uk/20140404184341/http://wales.gov.uk/about/cabinet/cabinetstatements/2009/090720marine/?lang=en>

6. THE MARINE AND COASTAL ACCESS ACT 2009

In April 2010, soon after royal assent of MCAA, SFCs were abolished¹⁴⁴ and the WG Fisheries Unit took direct control of management and enforcement of fisheries in inshore waters. The effect of the provisions in MCAA and the passage of the 'Marine Bill' are now examined in further detail.

6.1 Management of inshore fisheries (MCAA Part 6)

6.1.1 *England: Inshore Fisheries and Conservation Authorities (IFCAs)*

Under MCAA, section 149 confers power on the Secretary of State to create inshore fisheries conservation districts in England, for each of which there must be an Inshore Fisheries and Conservation Authority (IFCA) (section 150). Membership, powers and duties of IFCAs are comprehensively set out in Chapter 1, Part 6 MCAA. Two clear duties are imposed on any IFCA. First, it must manage the exploitation of sea fisheries resources in its district (section 153), which would include:

- ensuring that exploitation is sustainable;
- balancing social and economic benefits of exploitation with the need to protect the marine environment from, or promote its recovery from, exploitation;
- taking steps necessary or expedient for sustainable development;
- seeking to balance the needs of persons engaged in sea fisheries exploitation.

Secondly, it must seek to ensure that the conservation objectives of any marine conservation zone in its district are furthered (section 154), which, notably, should not be affected by the considerations imposed by section 153. Thus, in England, the key duties of an IFCA are to manage the exploitation of the fishery and to protect any MCZs in its district. IFCAs also have a number of powers, including making byelaws (section 155) in order to perform the duties imposed by section 153 or 154, as well as enforcement powers (sections 165 and 166).

Furthermore, under the Habitats Regulations, all public bodies (including IFCAs) must exercise any functions which are relevant to nature conservation to secure compliance with the Habitats Directive.¹⁴⁵ IFCAs are also identified as a "Relevant Authority", with power to establish a management scheme for a European Marine Site in the IFCA's district.¹⁴⁶

Where an IFCA district adjoins a Welsh inshore region, the IFCA "must take the steps it considers appropriate to co-operate with the Welsh Ministers".¹⁴⁷

The remit of IFCAs is therefore founded on the need to integrate conservation objectives with one of the key anthropogenic pressures impacting the marine environment: fisheries.

¹⁴⁴ S 187 MCAA repeals the Sea Fisheries Regulation Act 1966

¹⁴⁵ Regulations 7 and 9. See also section 4.1.1 of this report.

¹⁴⁶ Regulations 6 and 36.

¹⁴⁷ S174 MCAA

6.1.2 *Inshore fisheries in Wales*

6.1.2.1 PROVISIONS IN MCAA

For Wales, the position is set out in a much shorter Chapter 3, Part 6 MCAA.

There are no IFCA in Wales. Instead, the WG is the inshore fisheries manager and it introduced a non-statutory arrangement for consulting stakeholders, including the Welsh Marine Fisheries Advisory Group and three Inshore Fisheries Groups. This arrangement is analysed in detail in section 9 of this report.

Under section 189 Welsh Ministers have the power to make any provision which an IFCA could make under section 155, i.e. make byelaws to manage the exploitation of the fishery and further the conservation objectives of MCZs. In relation to Wales, MCAA is silent as to *duties* equivalent to those imposed on IFCAs: in other words, in Wales, there is no statutory requirement to manage the exploitation of the fishery resource, nor to further the conservation objectives of MCZs, nor to co-operate with adjoining English IFCAs. For seven years following the implementation of the new management regime, despite repeated attempts by Devon and Severn IFCA to establish contact with the adjoining Welsh inshore fishery manager Welsh Government, no meetings took place between the fishery managers in the Severn region. It is understood that a constructive meeting took place in summer 2017¹⁴⁸ and future developments in the relationship will be observed with interest.

The relationship between the legislatures and government in London and Cardiff was under scrutiny during the passage of the Marine Bill, and the Welsh Minister for Rural Affairs made it clear that she believed that it was politically unacceptable for Westminster to impose duties on the Welsh Ministers. This issue, and others relating to devolution, were discussed at length both in the House of Commons and in the National Assembly for Wales' Sustainability Committee. To understand the significance of these exchanges, a brief explanation of the progress of devolution is required.

6.1.2.2 DEVOLUTION AND INSHORE FISHERIES

“Devolution is a process not an event.”

Ron Davies, former Secretary of State for Wales, February 1999

The initial transfer of functions to Wales in 1999 was that of ministerial functions to the “National Assembly for Wales” (NAW), a body corporate, with no statutory recognition of an executive versus legislative authority for Wales. In that initial transfer, numerous functions under various acts, including fisheries legislation, moved to Wales.

¹⁴⁸ Private email with IFCA official.

Phases 2 and 3 came under the Government of Wales Act 2006. Phase 2 differentiated between the executive functions of a Welsh “government” and the legislative functions of an elected “national assembly”. The separation took effect following the NAW elections in May 2007 and the majority of functions which had been transferred in 1999 were then explicitly made over to the Welsh Ministers, i.e. “government”. In addition, the NAW was able to seek Legislative Competence Orders from Westminster, in relation to the matters set out in Schedule 5, which included fisheries. Once a Legislative Competence Order was obtained, the NAW was able to introduce primary legislation for Wales in the form of Assembly Measures. Since the 2011 referendum on further devolution for Wales, Phase 3 of devolution has seen powers conferred on the National Assembly to make primary legislation, in the form of Acts of the Assembly, in relation to the matters set out in Schedule 7 (including fisheries). There is no longer any requirement to seek a Legislative Competence Order from Westminster.

6.1.2.3 WELSH MINISTERS: POWERS OR DUTIES IN RELATION TO INSHORE FISHERIES

“...there seems to have been a great deal of interest in the duties placed, or not placed, on Welsh Ministers as they relate to IFCAs in the marine Bill. I consider this to be a political argument... I do not agree with the principle that UK legislation should put duties on Welsh Ministers. Giving us powers to undertake work in fisheries is important, but placing duties on us is not appropriate for UK legislation in this particular field. Welsh Ministers will be accountable to the Assembly and to the people of Wales for their actions and for their decisions on any implementation of powers”¹⁴⁹.

Elin Jones, Minister for Rural Affairs, 26 February 2009

As detailed above, MCAA imposes two clear duties on IFCAs in England, and confers a suite of powers to support compliance with those duties. In Wales, there is no public body which has equivalent duties to manage inshore fisheries and protect designated sites within them.

The Minister and the WG’s lawyer argued that the democratic accountability of Welsh Ministers was far greater than that of IFCAs, but that essentially there would be little if any difference between the new management regime and that in England. The WG officials and Elin Jones, Minister responsible for taking over Welsh fisheries, were satisfied that they would have the powers to do so. However, little detail was provided on how sustainability was to be measured and what resources would be available for the WG to enforce regulations out to 12 miles, and even less when it took responsibility out to the median line. In addition, there was little discussion on the likely impact of the centralisation of powers and what this might mean for responsive localised management in the face of occasional rapid changes in circumstances affecting geographically compact fisheries such as cockles.

¹⁴⁹ Elin Jones, Minister for Rural Affairs giving evidence to the National Assembly for Wales Sustainability Committee, 26th February, 2009. available at: [http://www.assembly.wales/Committee%20Documents/SC\(3\)-04-09%20%20Transcript%20\(PDF,%20198kb\)-26022009-119847/sc20090226qv-Cymraeg.pdf](http://www.assembly.wales/Committee%20Documents/SC(3)-04-09%20%20Transcript%20(PDF,%20198kb)-26022009-119847/sc20090226qv-Cymraeg.pdf)

Concerns about the disparities in the Bill between England and Wales were also aired during the debate in the House of Commons, with the MP for Bridgend noting the “disproportionate” number of Welsh MPs who had contributed to the debate. She went on to state: *“It is a matter of great concern that the Bill does not provide any duty towards sustainable inshore fisheries management in Wales—in contrast to the detailed provisions set out for England, where inshore fisheries and conservation authorities will be the new management bodies. A specific responsibility for sustainable fisheries management and the promotion of marine conservation zones should be placed on Welsh Ministers, along with a commitment to report to the National Assembly in order to create long-lasting certainty and a trail of accountability. The Bill presents the one opportunity for such a legal and lasting commitment, as the National Assembly has no power to lay down such duties.”*¹⁵⁰ *Wales must not be left with a lower standard of certainty and accountability for fisheries management than England.*^{151”}

The implementation of MCAA in relation to MCZs in Wales has been a debacle, such that the lack of duties requiring effective integration of fishery and conservation management in MCZs in inshore waters becomes academic: there is only one MCZ in Wales. However, a lack of political will is again evident in the fact that, although the Minister implied that NAW could place duties on the Welsh Ministers if it so wished,¹⁵² NAW has not done so, despite having the competence to do so since 2011.

6.1.2.4 NATIONAL ASSEMBLY FOR WALES: LEGISLATIVE COMPETENCE IN RELATION TO INSHORE FISHERIES

“At the end of the day, Welsh Ministers will be able to do what the IFCA will be able to do”¹⁵³

Sean Bradley, Senior Lawyer, Welsh Assembly Government, 26 February 2009

During the NAW Environment and Sustainability Committee (ESC) inquiry into the implications of the Marine and Coastal Access Bill for Wales, one assembly member noted *“...that there is a significant gap between the Assembly Government’s approach and its policy. If you are actively seeking the transfer of executive responsibilities to do that without seeking the transfer of*

¹⁵⁰ Note that at the time, NAW would have needed to obtain a Legislative Competence Order from Westminster to bring forward such a provision.

¹⁵¹ Mrs Madeleine Moon, Member for Bridgend, Hansard, Columns 750-753, 23 June 2009

¹⁵² “Welsh Ministers or legislators wanting duties placed upon them is a different issue”, Elin Jones, paragraph 110, Sustainability Committee, 26 February 2009

¹⁵³ Sean Bradley Senior Lawyer, Welsh Assembly Government giving evidence to The National Assembly for Wales Sustainability Committee, 26 February 2009 p19 available at: [http://www.assembly.wales/Committee%20Documents/SC\(3\)-04-09%20%20Transcript%20\(PDF,%20198kb\)-26022009-119847/sc20090226qv-Cymraeg.pdf](http://www.assembly.wales/Committee%20Documents/SC(3)-04-09%20%20Transcript%20(PDF,%20198kb)-26022009-119847/sc20090226qv-Cymraeg.pdf)

legislative competence, you are putting yourself in the position of having the responsibility but not the power to change whichever regime you put in place”¹⁵⁴.

The discussion between the ESC and the Minister for Rural Affairs during the inquiry related to whether a Legislative Competence Order should be sought to allow the NAW to pass primary legislation in relation to inshore fisheries. The Minister and her advisor were clearly of the view that the delegated power to make byelaws in relation to inshore waters would be adequate for the executive functions which were being transferred:

The process of developing the Marine and Coastal Access Bill began in autumn 2005 which coincided with the development of the Better Governance for Wales White Paper. The advice at the time to ministers was that the existing devolved powers, together with the new powers created under the Bill for fisheries, were sufficiently comprehensive for Welsh Ministers to effectively manage Welsh fisheries, and that specific Welsh clauses would be pursued, as required, in the Bill. It was not therefore felt necessary to seek legislative consent in this area. *“I am content that my existing powers, plus the additional powers which the Marine and Coastal Access Bill provides, are sufficient for Welsh ministers to effectively manage and enforce Welsh fisheries, in line with the Assembly Government’s Fisheries Strategy.”¹⁵⁵*

Although significant at the time, the issue became moot with Phase 3 of devolution, since NAW no longer needs to seek a Legislative Competence Order to make primary legislation in relation to fisheries or marine conservation. And indeed, MCAA, when it came into force, conferred powers on Welsh Ministers to make the same types of byelaws as IFCA could make in England; but, of course, powers are discretionary, and the Welsh Ministers cannot be required to exercise them. Of much more concern is the point regarding duties: NAW is yet to impose clear and enforceable duties on the WG equivalent to those placed on IFCA, in relation to the management of, and conservation objectives for, inshore fisheries in Wales.

6.1.3 Estimated costs of implementing MCAA part 6

One of the greatest discrepancies between England and Wales in the run up to the new management regime was the cost that had been estimated to implement the changes. In England, the extra costs had been estimated as £5 million a year, including one-off costs of £500,000 to implement the reforms and £200,000 of set-up costs for a new information technology system. In contrast, the WG estimated that the total cost of reform for Wales would amount to £29,000, though £900,000 per annum, which had previously been made available to Local Authorities for use by SFCs, would now remain with the WG ¹⁵⁶. However, it was admitted that this had not considered the extra conservation enforcement duties that were to be taken on

¹⁵⁴ Alun Davies, Member of the Welsh Assembly questioning Elin Jones the Minister for Rural Affairs, The National Assembly for Wales Sustainability Committee, 26 February 2009 p21

¹⁵⁵ Letter from Minister for Rural Affairs to the Chair of the Assembly Sustainability Committee, 31 March 2009

¹⁵⁶ Elin Jones the Minister for Rural Affairs, The National Assembly for Wales Sustainability Committee, 26 February 2009 p24

in England by IFCAs, and that ¹⁵⁷ the WG would need to undertake these extra roles or the roles undertaken by the SFCs in respect of European Marine Site management¹⁵⁸. In addition, the changes to fisheries management took place at a time of stringent budget cuts.¹⁵⁹ In June 2016, the budget for developing and managing Welsh marine, fisheries and aquaculture for 2016-17, was £2,509,000.^{160, 161} (0.65 per cent of the Environment and Rural Affairs budget)¹⁶². Despite this financial squeeze, the WG remained bullish about its aspirations to support “blue growth”, which, given the context of austerity that had been imposed on it by the UK Government, demonstrates a certain level of optimism and inconsistency, especially as it coincides with major cuts to supporting agencies such as NRW.

6.2 Nature conservation – Marine Conservation Zones

Part 5 of MCAA included powers for the Welsh Ministers to designate (s116) Marine Conservation Zones for the purpose (s117) of conserving:

- (a) marine flora or fauna;
- (b) marine habitats or types of marine habitat;
- (c) features of geological or geomorphological interest.

It places duties on the Welsh Ministers to designate MCZs to contribute to the achievement of the objective of forming a network of sites which meet a number of conditions (s123), namely:

- (a) that the network contributes to the conservation or improvement of the marine environment in the UK marine area;
- (b) that the features which are protected by the sites comprised in the network represent the range of features present in the UK marine area;
- (c) that the designation of sites comprised in the network reflects the fact that the conservation of a feature may require the designation of more than one site;

and to report to the National Assembly on the extent to which the objective has been achieved, and the further steps which are required (s124).

¹⁵⁷ Despite the requirement in the MFSD (2008) for Member States to put in place measures to achieve or maintain Good Environmental Status in their seas by 2020, a key element of which is MPA management and condition.

¹⁵⁸ Elin Jones the Minister for Rural Affairs, The National Assembly for Wales Sustainability Committee, 26 February 2009 p24

¹⁵⁹ It is expected that the total WG budget will be 11 per cent lower in 2019-20 compared to 2010-11. <http://gov.wales/docs/caecd/publications/151208-budget-narrative-eng.pdf> Accessed 7/12/16

¹⁶⁰ 1st Supplementary Budget June 2016, available at: <http://gov.wales/docs/caecd/publications/160621-meg-en.pdf> Accessed 3rd November 2016.

¹⁶¹ This excludes staffing costs (Fol response Welsh Marine and Fisheries 9/01/2017)

¹⁶² In addition, a further £6,603, 000 was allocated to develop and deliver overarching policy and programmes on Agriculture, Food and Marine, but no breakdown between the sectors is possible (Fol Response Welsh Marine and Fisheries 9/01/2017).

Whilst designation would be based upon scientific evidence, section 117 (7) states that the designating authority may have regard to any economic or social consequences of designation – thus allowing it the option of minimising impacts on human activity.

The commencement provisions under MCAA left the Welsh Ministers to bring these provisions into force in Wales. What actually happened in Wales is discussed in section 7.1.

7. MARINE PROTECTED AREAS

“I am committed to fulfilling Wales’ contribution to an ecologically coherent and well managed network of marine protected areas in the UK by the end of 2016.”

Minister of Natural Resources and Food, 18 June 2013¹⁶³

EU, UK and Welsh marine policies are peppered with references to the need to create and maintain a network of “Marine Protected Areas” (MPAs). MPA is a generic term for various sites in the marine environment which have been designated for conservation purposes (see Table 4). MCZs are one type of MPA. The MSFD requires the protection, preservation and restoration of the marine environment with the ultimate aim of “*maintaining biodiversity*” and “*seas which are clean, healthy and productive*”.¹⁶⁴ To that end environmental considerations should be integrated into all relevant policy areas. It notes that establishing MPAs is an important contribution to the achievement of “*Good Environmental Status*”¹⁶⁵ and the fulfilment of the UK’s and the EU’s international commitments under the Convention on Biological Diversity.¹⁶⁶ Under the MSFD, member states are required to develop a marine strategy which should cover coastal waters. In Wales, consultation on the Welsh National Marine Plan has begun in fulfilment of the MSFD requirements.¹⁶⁷

TABLE 4: What are MPAs?

Acronym and name		Reason for designation	Notes
EMS	European Marine Sites	See SAC and SPA reasons for designation below.	Generic term for SACs and SPAs (see below) designated in the marine environment – called “European” as the UK is required under EU provisions to create such sites as part of the pan-European Natura 2000 network.
MCZ	Marine Conservation Zones	Conserving marine flora or fauna, marine habitats or types of marine habitats or features of geological or geomorphological interest.	See Section 117 Marine and Coastal Access Act 2009
MNR	Marine Nature Reserves	Conserving marine flora or fauna of geological or physiographical features of special interest, or providing opportunities for the study of and research into such flora, fauna and	See Section 36 Wildlife and Countryside Act 1981 Marine Nature Reserves no longer exist, as this provision was repealed by Marine and Coastal Access Act 2009.

¹⁶³ Marine and Fisheries – Future Direction and Strategic Action Plan: Supporting Document in conjunction with the Ministerial Oral Statement, 18 June 2013

¹⁶⁴ Recitals to Directive 2008/56/EC, 17 June 2008

¹⁶⁵ Required by Article 6 MSFD

¹⁶⁶ The UK also has obligations under the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic

¹⁶⁷ <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-planning/welsh-national-marine-plan/?skip=1&lang=en>

		features.	
MPA	Marine Protected Areas		Generic term for all or any of the designations listed in this table
SAC	Special Areas of Conservation	Importance of the site for maintenance or restoration at favourable conservation status of certain types of natural habitat and/or species	See Regulation 11 Habitats Regulations 2010 (replacing Habitats Regulations 1994) pursuant to the Habitats Directive 92/43/EEC
SPA	Special Protection Areas	Conservation of certain species of wild birds	See Regulation 12A Habitats Regulations 2010 (replacing Habitats Regulations 1994) pursuant to the Wild Birds Directive 2009/147/EC
SSSI	Sites of Special Scientific Interest	Protection and management of land that is of special interest by reason of any of its flora, fauna, or geological or physiographical features. Here, land includes any land lying above the mean low water mark (or extreme low water spring tides in some locations) and any land covered by estuarial waters.	See Section 28 Wildlife and Countryside Act 1981

7.1 Marine Conservation Zones

As noted in section 6 of this report, MCZs may be designated under MCAA. Previously a Marine Nature Reserve, Wales' only MCZ is around Skomer Island and the Marloes Peninsula in Pembrokeshire¹⁶⁸; with an area of a little over 13km² it occupies just 0.08% of Wales' territorial seas.

In 2012, prior to commencement of the MCAA MCZ provisions, the WG launched a "Highly Protected Marine Conservation Zones" consultation.

Following advice from CCW, the WG intended to use the MCZ mechanism to designate a small number of highly protected MCZs in Welsh inshore waters¹⁶⁹. It identified ten potential hpMCZ sites to gather information to create a shortlist of three to take forward for further consideration.¹⁷⁰ The process failed: the WG abandoned its proposals for a small suite of hpMCZs in July 2013¹⁷¹ and has not revisited them since.

It was evident at the time that there were flaws in the process:

¹⁶⁸ The former Skomer Marine Nature Reserve, designated in 1990, was redesignated as Wales' first, and still only, Marine Conservation Zone in December 2014

¹⁶⁹ Protecting Welsh Seas: a draft Strategy for Marine Protected Areas in Wales. Welsh Assembly Government, September 2009 ISBN: 978 0 7504 5351 6

¹⁷⁰ Marine Conservation Zones (MCZs) Potential Site Options for Welsh Waters. WG Consultation Document, April 2012 (<http://gov.wales/docs/desh/consultation/120419marinesiteen.pdf>) and covering letter

¹⁷¹ <http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2013/mcz/?lang=en>

*“... the consultation process has been badly misjudged and mishandled. The inaccessible and ambiguous consultation document both unnecessarily alarmed and alienated many people, and the government’s public engagement in support of the consultation failed to adequately clarify confusion or clearly answer questions, reconfirmed public suspicions and distrust, and allowed disinformation to thrive”*¹⁷²

and that

*“... whilst efforts were made to engage the public, more should have been done and earlier. In consequence, other stakeholders, such as WWF, become to a certain degree, de facto spokespeople for what was a government process and left to publicly communicate the value of marine conservation and address confusion around the content of the government proposals for creating highly protected MCZs. This should have been the job of the WG”*¹⁷³

The consequences of this is that

*“It was clear and welcome from listening to the [Environment & Sustainability] Committee’s discussion that members aspire to reach an informed, balanced conclusion. This will be a challenge since the differing positions are predicated on fundamentally different underlying premises. The arguments for or against reflect much more than geographical and local differences: the rationale for designation of highly protected MCZs is science-based, essentially altruistic and focussed on long-term sustainability; arguments against appear to focus on protection of self-interests and a disbelief in the Government’s scientific and legal justification for designating hpMCZs”.*¹⁷⁴

The mismanagement of the process, and the consequential misleading media coverage, undoubtedly exacerbated mistrust between the parties involved, particularly local communities, fisheries representatives and conservationists, and made fishermen and local communities suspicious of both the WG marine and fisheries departments and marine conservation NGOs, and ultimately stalled this attempt to improve the state of the Welsh marine environment.

From about 2010 the WG increasingly established advisory groups, with invited memberships, to advise on taking forward various aspects of marine management.

Amongst the first of these were groups to advise the then Marine Branch on taking the hpMCZ forward: a Technical Advisory Group (to advise on site selection and selection criteria) and a Stakeholder and Citizen Engagement Group (SCEG). In both cases, the WG marine staff consistently disregarded advice that did not match their agenda and steered and micro-managed the conclusions of the groups – despite them supposedly existing to provide the WG with independent expert advice.¹⁷⁵ Worse, the WG appeared unsure of the SCEG’s role despite the terms of reference which it provided to the Group: *“We had a stakeholder group, which I chaired,*

¹⁷² Blaise Bullimore, 30/07/2012. Letter to John Griffiths, Minister for Environment and Sustainable Development.

¹⁷³ WWF-Cymru evidence to the Environment and Sustainability Committee into Marine Policy in Wales 21st September 2012

¹⁷⁴ Blaise Bullimore, letter to William Powell, AM Chair, Petitions Committee, National Assembly for Wales 19/10/2012

¹⁷⁵ *pers comm* from members of both groups

... to advise the Government as to how to do their stakeholder work, but which the WG seemed to think was a stakeholder representation group, although we told them on many occasions that we weren't able to represent anyone" ¹⁷⁶.

In the aftermath of the failed hpMCZ programme, the WG convened an MCZ Stakeholder Focus Group (SFG) to complement an MCZ Task and Finish Group (TFG) comprised of the WG marine and fisheries staff and officers of statutory agencies engaged in the MCZ process. Whilst the role of the TFG was made clear (*"to reflect on and fully explore all the information received, to inform how we move ahead with MCZs in Wales"* ¹⁷⁷), the notes of the SFG meetings do not indicate that, despite being included on the agenda for the first meeting, the scope of its role was ever made clear to its members. Although the Group is recorded as agreeing its vision as being to *"...work together as part of the MCZ task and finish project to ensure the seas around Wales are clean, healthy, productive and diverse"*, since this objective simply paraphrases the UK's high level marine objectives (see footnote 85) and is silent on the designation and management of MPAs, it is difficult not to assume the vision was drafted by the WG rather than the membership of the Group.

The SFG first met in December 2012. Of its 22 members, only five represented conservation organisations. In contrast it was over-represented by both commercial and recreational vested interests and included groups established specifically to oppose the hpMCZ programme, thus loading the Group with individuals antagonistic towards effective MPAs.

Despite repeated requests for membership of the Group, the WG refused seats to two of the most experienced individuals with relevant knowledge. The chairman of the Skomer MNR Advisory Committee (one of the original proponents of the MNR in the early 1970s and scientific secretary of the MNR's forerunner voluntary marine reserve until formal designation in 1990) and the first manager of the MNR whose experience as the only person in Wales (and the UK) to have highly relevant and unique roles in the consultation and negotiation leading to designation, together with managing and monitoring an MNR, were both excluded ¹⁷⁸. This seems to demonstrate marginalisation of the most articulate and knowledgeable individuals, thereby appearing to filter out 'uncomfortable knowledge'¹⁷⁹ by those in power in the WG marine and fisheries departments (M&FD).

We have been unable to locate records of the MCZ TFG meetings, however, in due course, its reports were shared with the SFG. It unsurprisingly recommended that the hpMCZ process be

¹⁷⁶ Prof L. Warren in evidence to NAW Climate Change, Environment & Rural Affairs Committee inquiry into Wales MPA management
<http://senedd.assembly.wales/documents/s58991/1%20February%202017.pdf>

¹⁷⁷ Ministerial Statement: Marine Conservation Zones – next steps. John Griffiths, Minister for Environment and Sustainable Development, 5 November 2012
<http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2012/marineconservationzones/?lang=en>

¹⁷⁸ correspondence Blaise Bullimore, former Skomer MNR manager, and Louise George, WG Marine Branch; note that despite political and NGO assertions to the contrary, the MNR designation was not actually statutorily dissimilar to an MCZ.

¹⁷⁹ Steve Rayner (2012) Uncomfortable knowledge: the social construction of ignorance in science and environmental policy discourses, *Economy and Society*, 41:1, 107-125, DOI: 10.1080/03085147.2011.637335

abandoned. Nevertheless, its rationale for doing so was poorly founded since it largely depended on repetition of many of the disingenuous, false and misleading assertions and beliefs that had triggered the antagonism toward the hpMCZ proposals during the consultation process, from fishing, local community and business interests, and despite the fact that 81 per cent of consultation responses were in favour of hpMCZs - a fact that disappeared between the consultation feedback report to the SFG and the final report. Given that an equal proportion of fisheries and business respondents had objected to the proposals (19% in total) and the weighting of the SFG membership toward those interests, it is unsurprising that the SFG endorsed the TFG's report, enabling the Minister to claim the support of stakeholders for his decision to terminate the hpMCZ programme.

It is notable that by January 2013, some three years after Royal Assent, and when it was evident that the hpMCZ consultation process had failed, the National Assembly Environment and Sustainability Committee (ESC) was roundly criticising the WG for its “*disinclination*” to introduce the provisions of MCAA Part 5¹⁸⁰. Whilst MCAA places powers and duties on the WG to create a network of MCZs for the purposes of conserving or improving the marine environment, and sets out provisions for the legislature to hold the executive to account, it was left to the executive to introduce the provisions. The ESC made its position clear:

“115. We consider the passing of legislation that leaves the commencement of scrutiny clauses (s.123(6) and s.124(1)) of the executive to be inadequate. Further to this, we are disappointed with the Welsh Ministers’ disinclination to commence Part V on the grounds that they are not able to meet the requirements of this part of the Marine Act.¹⁸¹ It is clear to us that when this Act was passed, it was expected that Part V would be commenced before the end of 2012, else there would not have been a time limited clause on the face of the Act. We urge Welsh Ministers to commence Part V as soon as possible.

116. As we understand it, the Welsh Government’s disinclination to commence Part V is due to the section 123(6) requirement to publish a statement of principles relating to the achievement of the objectives set out in section 123(2) within two months of Section V coming into force.

118. This leads us to the view that the WG has not managed the implementation of the Marine Act well. The drafting of sections 123 and 124 of the Marine Act leave us in no doubt that Part V should have been commenced, as both the statement of principles and the section 124 report should have been laid before the Assembly by the end of 2012. As a consequence of delaying the commencement of Part V, important provisions for democratic accountability have been circumvented¹⁸² and the timetable for meeting commitments has been delayed beyond a point that we, and stakeholders, consider reasonable.”¹⁸³

¹⁸⁰ National Assembly for Wales Environment and Sustainability Committee Inquiry into marine policy in Wales, Report, January 2013

¹⁸¹ Our emphasis.

¹⁸² Our emphasis

¹⁸³ *ibid*

Eventually, MCAA Part 5 came into force in Wales in December 2014¹⁸⁴. At the time of writing, some three years later, the WG still has not designated a single MCZ in Wales. The one which does exist, at Skomer, did not require designation by the Welsh Ministers since the transitional provisions automatically changed its status from Marine Nature Reserve to MCZ when Part 5 came into force.

Skomer MCZ has the longest and most comprehensive marine monitoring data sets in Wales, but it is unique, and the monitoring of most Welsh MPAs lacks anything approaching the same level of detail. Whilst NRW does monitor other MPAs with respect to designated EMS features, the lack of detailed up-to-date evidence remains an Achilles' heel that impedes improved marine management in Wales, whether for fisheries or wider marine conservation purposes.¹⁸⁵ However, both Skomer MCZ's management and localised collection of marine evidence are at risk because the WG has failed to resolve where the responsibility lies for its management and resourcing¹⁸⁶.

Despite the MCZ designation (and as MNR previously) neither it nor anywhere else in Wales is protected from all forms of fishing or other disturbing or damaging activities; consequently, there is no area in Wales that can be studied to demonstrate the outcomes of comprehensive protection from fishing or other disturbances¹⁸⁷. Thus, although in theory Wales has the largest proportion of its marine area designated as MPA in the UK, it has failed to achieve even one per cent of the IUCN 20–30 per cent target of each marine habitat designated as Highly Protected (“No Take”) Marine Protected Areas by 2012¹⁸⁸.

The delay in implementing the MCZ provisions in Wales, coupled with the failed hpMCZ consultation process and subsequent failure to create new MCZs in Wales demonstrates a lack of political will to drive forward any agenda for the protection of marine sites in Wales.

7.2 Sites of Special Scientific Interest

Sites of Special Scientific Interest may be designated for protection where the nature conservation body is of the opinion that any area of “land” is of special interest.¹⁸⁹ [See table 4.] “Land” includes any land lying above mean low water mark (i.e. the intertidal), and any land

¹⁸⁴ The Marine and Coastal Access Act 2009 (Commencement and Consequential Provisions) (Wales) Order 2014 <http://www.legislation.gov.uk/wsi/2014/3088/contents/made>

¹⁸⁵ See Natural Resources Wales. 2016. State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources. Technical Report. Natural Resources Wales. Chapter 3. Summary of extent, condition and trends of natural resources and ecosystems in Wales, p74

¹⁸⁶ Correspondence between Skomer MCZ Advisory Committee, NRW and the Cabinet Secretary, 2014 – 2016, annexed to letter from Blaise Bullimore to the Assembly Climate Change Environment and Rural Affairs Committee MPA management inquiry, dated 14 April 2017; <http://senedd.assembly.wales/documents/s63230/Paper%204%20-%20Paper%20to%20note%20-%20Correspondence%20from%20Mr%20Bullimore.pdf>

¹⁸⁷ Bullimore, B. 2017 All at sea. Natur Cymru 62

¹⁸⁸ Recommendations of the Fifth IUCN World Parks Congress, Durban, South Africa. http://www.uicnmed.org/web2007/CDMURCIA/pdf/durban/recommendations_en.pdf Accessed 29/10/2017

¹⁸⁹ ss28 – 28S Wildlife and Countryside Act 1981, as amended

covered by estuarial waters. In consultation with the site owner, the nature conservation body may create a management scheme for the SSSI and it has powers to ensure compliance with a management scheme in place. Owners of SSSIs are prohibited from carrying out operations likely to damage the special features unless the activity has been authorised. The nature conservation body can make byelaws for the protection of a SSSI, and the provisions also create a number of offences in relation to SSSIs, including: the carrying out of unauthorised operations likely to damage the special features - whether by owners, occupiers, statutory undertakers, or others; and the intentional or reckless destruction or damage of any of the special features by a person, knowing that the site was a SSSI. There is a general duty on public bodies, including the Welsh Ministers and NAW, to “take reasonable steps, consistent with the proper exercise of the authority’s functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features” for which a SSSI has been notified. The vast majority of SSSIs are terrestrial, but in Wales there are 107 with a marine element, covering 413 km² or approximately 1% of Welsh waters.¹⁹⁰

7.3 European Marine Sites

In England and Wales the Habitats Regulations implement the EU Birds and Habitats Directives (see section 4.1.1), and enable the designation and management of Natura 2000 sites in the UK. In Wales there are nine marine SPAs and eleven marine SACs, collectively known as European Marine Sites (EMS)¹⁹¹.

The Habitats Regulations grant powers to “relevant authorities”, identified in Regulation 6, the power to develop management schemes for EMS. Whilst there is no statutory requirement for partnership working, in practice, and since the regulations provide that there could only be one management scheme per site, “Relevant Authority Groups” (RAGs) were formed for most sites to best enable the relevant authorities to work together for management purposes. Although the same process took place in England, most of the groups labelled themselves as “Management Groups”. These groups were not a statutory requirement and have no independent management authority, but are simply a practical and expedient means of allowing management authorities to feed into development and review of the single management scheme for an EMS, as recommended by government guidance¹⁹², and as later endorsed by a review of management scheme effectiveness in England published by DEFRA (the Morris review¹⁹³).

The thrust of modern marine policy and legislation is that integration is key to successful management and the achievement of “good environmental status” under the EU Directives, and

¹⁹⁰ Email from JNCC to Kerry Lewis, 18/10/2017

¹⁹¹ <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-conservation-and-biodiversity/marine-protected-areas/?lang=en>

¹⁹² DETR / Welsh Office, 1998. European Marine Sites in England & Wales. A Guide to the Conservation (Natural Habitats &c) Regulations 1994 and to the Preparation and Application of Management Schemes. HMSO ISBN 1851120874

¹⁹³ *A review of effectiveness of management schemes for European Marine Sites* Roger Morris *et al*, 2012. DEFRA project MB0113. “The Morris review”: http://randd.defra.gov.uk/Document.aspx?Document=10378_MB0113finalreport.pdf

it is clear that appropriate management of fisheries in or adjacent to EMSs should be integrated into their management schemes. Sea Fisheries Committees were specifically identified as relevant authorities ¹⁹⁴ and were represented on the RAGs in Wales. Following the dissolution of SFCs by the MCAA and their replacement by inshore fisheries and conservation authorities, the 2010 amendment and consolidation of the Habitats Regulations accommodated the change regarding England. However, given that IFCA's do not exist in Wales, there is a regulatory gap: there appears to be no statutory power for the inshore fishery authority for Wales, whoever that, from time to time, may be, to establish a management scheme for an EMS under regulation 36 – whether alone or in consultation with others.

As noted in section 5.2, during the consultation on whether inshore fishery management should be centralised within the WG, concerns were raised as to future participation of Wales' inshore fisheries managers on the RAGs, and respondents sought WAG's assurance that the appropriate inshore fisheries manager, i.e. the WG itself if centralisation occurred, would continue to participate.

Despite a direct and straightforward reassurance that it would be able to do so (e.g. see Appendix 3; Organisation of new structure, row 5), the WG in its inshore fisheries management functions has not directly participated in any of the RAG meetings. It has been invited to do so multiple times, but has used the very concern raised by the respondents (i.e. that it was not defined as a "relevant authority" under the regulations) as a reason not to participate ¹⁹⁵.

Consequently, since the dissolution of SFCs in Wales, fishery managers have not been represented on the RAGs for Welsh European Marine Sites. Without direct communication and participation of the fishery manager in the management scheme for the EMS, one of the overriding pressures on such sites cannot be adequately addressed – much to the frustration of other RAG members.

Perhaps it is time to require such participation. The argument advanced in 2008 in relation to the provisions of MCAA, that it was not appropriate for Westminster to impose duties on Cardiff, is mercifully irrelevant: the National Assembly for Wales has the competence to make primary legislation for fisheries, and could now move things forward by imposing a duty on the inshore fishery manager to participate in the creation of management schemes for EMS. ¹⁹⁶

Of the Natura 2000 marine habitats and species that were assessed for status for the sexennial Habitats Directive report to the European Commission in 2007, 100 per cent of species and 79 per cent of habitats were reported as being in unfavourable status, meaning they were not under

¹⁹⁴ Habitats Regulations: "a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966 or any authority exercising the powers of such a committee." (1994 Regulation 5(h); 2010 Regulation 6(j)). Both provisions now revoked.)

¹⁹⁵ Correspondence between EMS relevant authority groups and WG M&FD;

¹⁹⁶ Although they do not do so in a specific "fishery manager" capacity, it is perhaps notable that both English (and Scottish) government departments and ministries participate in the majority of English (and English-Scottish cross border EMS, indicating a willingness on behalf of those executive bodies to engage directly with the process of fishery-conservation co-operation - something which has been conspicuously absent in Wales.

secure management to maintain or improve their condition¹⁹⁷. By 2012, early indications were that, despite some improvement in condition in places, most features were considered to be in the same or worse condition and conservation status¹⁹⁸. However, the continuing poor state of the UK's EMS was emphasised in the 2013 report to the EU which showed that the status of all five major marine habitats in Wales was "unfavourable" and, of these, three continued to deteriorate¹⁹⁹.

NRW drew attention to these findings in its 2016 SoNaRR report: "*The condition of SAC and SPA species features on sites in Wales, as reported in 2013, remains mostly unfavourable (55 per cent)*"²⁰⁰. The SoNaRR report went on to comment that despite some improvements in recent years, particularly in water quality and some elements of air quality, many of the natural resources and resilience of Wales' ecosystems are continuing to decline, with the overall long-term combined trend for species being downwards.

The lack of engagement in introducing or implementing positive management measures by competent authorities had been identified by CCW in reviews of MPA management in 2012²⁰¹ (and by others since²⁰²), though the significance of the issues that were raised in those reports appear to have been ignored with respect to the impact of the post-2010 management regime on their duties to deliver key EU directives.

¹⁹⁷ <http://jncc.defra.gov.uk/page-4067>; as cited by WWF in evidence to the Environment and Sustainability Committee, 21/09/2012

¹⁹⁸ C.C.W. Responses to WG Environment and Sustainability Committee Consultation Process on Marine Policy in Wales (2012)

¹⁹⁹ JNCC data and reporting forms: <http://jncc.defra.gov.uk/page-6392>; <http://jncc.defra.gov.uk/page-6563>

²⁰⁰ Natural Resources Wales. 2016. State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources. Technical Report. Natural Resources Wales. Chapter 3. Summary of extent, condition and trends of natural resources and ecosystems in Wales, p10

²⁰¹ *MPA Management in Wales 1: Overview of current MPA management in Wales and a summary of new MPA management tools*. M. Hatton-Ellis, L. Kay, K. Lindenbaum, G. Wyn, M. Lewis, M. Camplin, A. Bunker, A. Winterton, S. Howard, G. Barter & J. Jones. CCW Marine Science Report No 12/06/01; *MPA Management in Wales 2: Evaluation of current MPA management in Wales*. M. Hatton-Ellis, L. Kay, M. Lewis, K. Lindenbaum, G. Wyn, A. Bunker, A. Winterton, S. Howard, G. Barter, M. Camplin, & J. Jones. CCW Marine Science Report No 12/06/03

²⁰² For example, Bullimore, 2017. All at sea. Natur Cymru 62 *ibid*; Bullimore, B & Lewis, K 2017. All at sea: marine protection in post-Brexit Wales. ECOS 38(3); Prof L. Warren and Dr S. Gubbay in evidence to NAW Climate Change, Environment & Rural Affairs Committee inquiry into Wales MPA management <http://senedd.assembly.wales/documents/s58991/1%20February%202017.pdf> *ibid*.

8. BUILDING UP THE EVIDENCE BASE TO IMPROVE MARINE PLANNING

“Limited data makes assessing the extent, condition and trends of commercially targeted marine fish and shellfish species at a Welsh level challenging.”²⁰³

NRW SoNaRR (2016) Chapter 3 p 14

The WG has published a Wales Marine Evidence Report (WMER) as an important part of its marine planning process²⁰⁴, the evidence for which “has been collected from a variety of public sources in the peer-reviewed and grey literature”²⁰⁵. However, there is little suggestion that as far as fisheries are concerned this material had been sourced from the M&FD or NRW, though it does refer to NRW Special Sites Database which identifies negative impacts, including from fishing, on MPAs^{206 207}.

The WG claimed it was taking a new approach to the management of natural resources in support of its aim to drive sustainable economic growth²⁰⁸, thereby improving the quality of life and increasing the range of opportunities for everyone who lives and works in Wales. This new approach was to enable a “step-change” in the delivery of sustainable natural resource planning and use in Wales by being more proactive, evidence-based and integrated. The step-change is not explained, but the implications of this new approach are that natural resources would be used more effectively to produce economic growth²⁰⁹. The use of the term sustainable economic growth in this context, itself contentious, is not questioned, nor its scope defined; i.e. there is little explanation of what is intended to be sustained, economic growth or the underpinning natural resources or environment, or what the limits to growth may be, now or in the future.

Although fisheries, as distinct from aquaculture, is not identified as a specific sector where growth is expected, the WMER acknowledged that a key issue was to gather a range of quality spatial data for the sector²¹⁰. Nevertheless, “...the paucity of good spatial data for fisheries activities (in particular for vessels less than 12 m)” is acknowledged²¹¹. Many IFG minutes

²⁰³ Natural Resources Wales. 2016. State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources. Technical Report. Natural Resources Wales. Chapter 3. Summary of extent, condition and trends of natural resources and ecosystems in Wales, p14

²⁰⁴ <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-planning/other-supporting-evidence/wales-marine-evidence-report/?lang=en>;
<http://gov.wales/docs/drah/publications/151008-wales-marine-evidence-report-master-october-2015-en.pdf>

²⁰⁵ WG (2015), Welsh Marine Evidence Report, p iii

²⁰⁶ WG (2015), Welsh Marine Evidence Report, p x

²⁰⁷ The database was developed by CCW, inherited by NRW, BUT the marine content drew very heavily on the work carried out by RAGs and their EMS officers during preparation of management schemes, though their work was not credited by CCW, NRW or the Welsh Government.

²⁰⁸ E.g. WMER Summary page v: <http://gov.wales/docs/drah/publications/151008-wales-marine-evidence-report-master-october-2015-en.pdf>;

²⁰⁹ WG (2013) Wales Marine and Fisheries Strategic Action Plan

²¹⁰ Wales Marine Evidence Report (2015)

²¹¹ WG (2015), Welsh Marine Evidence Report, p xix

highlighted that poor data collection, especially from the <10 metre fleet, has been a major problem facing fisheries managers since 2011 ²¹².

The lack of up-to-date evidence is emphasised in the WMER which states that *“The Sea Fishing Atlas for Wales (Countryside Council for Wales 2010) was compiled from information collected between 2000 and 2005 from various sources, including fishermen, fishery officers, fishery regulators and other marine users. Whilst the outputs may now be somewhat dated and the locations of actual fishing activity may be debated in the absence of any other spatial data, the report is indicative of the then fishing activity areas in Welsh inshore waters”*.²¹³ This validity of much of the information contained in the Atlas was strongly challenged internally within CCW by officials with direct, front-line, knowledge and experience. Nevertheless, the objections concerning its shortcomings and errors were overridden and the Atlas was published despite them.

The FishMap Môn project was a fishing effort mapping exercise undertaken from 2013 to 2015, instigated by CCW, later led by NRW, in collaboration with Liverpool University. The project area extended from Nefyn to the Great Orme and extended out to the 12-mile limit around Anglesey²¹⁴. *“FishMap Môn is a project aiming to help achieve the vision of the Wales Fisheries Strategy. The project is being carried out around Anglesey in North Wales to engage with fisherman in order to collect information about fishing activity and intensity. This data will then be mapped with existing habitat and sensitivity data to develop options to inform sustainable fisheries management - showing which areas are vulnerable to fishing activities and which are more robust”*.²¹⁵ Whilst the project received favourable response from both government and industry²¹⁶ it appears that the fundamental weakness of depending on unverified claims, the Achilles heel of the CCW Atlas, was repeated. Furthermore, although the combination of effort and sensitivity data may improve decision making, the evidence bases of both factors are too limited to provide a realistic understanding of potential relationships between fishing activity and seabed features even for North Wales, let alone the whole Welsh marine environment.

A Bangor University led European Fisheries Fund / WG funded project *Sustainable Fisheries for Wales* (2011-15) aimed to put in place a programme of scientific evidence gathering through collaboration between academics, industry, government-funded bodies, policymakers and

²¹² E.g. Mid-Wales IFG minutes 20/09/2011 (Fol request)

²¹³ WG (2015), Welsh Marine Evidence Report, p 278

²¹⁴ Jackson, B. (2014) FishMap Môn – bespoke application development case study
<https://astuntechnology.com/media/website/downloads/case-studies/FishMapMonCaseStudy.pdf>

²¹⁵ (<http://www.ccw.gov.uk/landscape--wildlife/managing-land-and-sea/fishmap-mon.aspx?lang=en>) cited in UK General Implementation Report Annex A of the 2013 UK Article 17 EU Habitats Directive Report p8 available at: http://jncc.defra.gov.uk/pdf/A17_2013_Gen_Imp%20Rpt_Appd.pdf accessed 17/12/2016

²¹⁶ E.G: Welsh Government’s Natural Resource Management case studies (<http://gov.wales/docs/desh/publications/140331natural-resources-case-studies-en.pdf>) and article Fish Map Môn project to boost fishing industry (www.geospatialworld.net/news/fish-map-mon-project-to-boost-fishing-industry/)

managers to inform management decisions to improve the sustainability of Welsh fisheries. The Welsh Fishermen's Association were enthusiastic supporters of and partners in the research²¹⁷.

Amongst a wide range of methodologies, participation with fisherman was an important element to enable the collection of data for assessment of stocks. Fishermen were invited to produce catch figures by Bangor School of Ocean Science (SOS) staff at many venues, including IFGs, but it is unclear the extent to which responses were forthcoming. However, fisheries officers are highly supportive of the work undertaken by the SOS which addressed stock base line survey and information for management on scallop²¹⁸, lobster²¹⁹ and crab²²⁰, prawn²²¹, whelk²²² and bass²²³.

The project included a survey of fishers' knowledge of historical and contemporary fishing effort and grounds. It used a similar approach and based its mapping software on FishMap Mon, rendering it liable to the same lack of independent verification. Regardless, the resulting report makes clear that fishers' concerns over the potential use of their data to inform spatial planning or the identification of marine protected areas resulted in this data being withheld from public dissemination²²⁴.

In contrast, although it covers a small area, the detailed, high-quality, fishing effort data collected systematically and independently in the Skomer MNR / MCZ off the Pembrokeshire Coast since the late 1980s as part of the MNR / MCZ's routine long-term surveillance and monitoring programme²²⁵, does not appear to have been used by WMER. Neither is it apparent that any fishing vessel monitoring system (VMS) data (albeit limited to a small proportion of mostly >10m vessels fishing in Welsh waters) has been used. Nevertheless, the latter is possibly surprising since given the sparseness of reliable, objective effort data.

²¹⁷ <http://fisheries-conservation.bangor.ac.uk/wales/> and specifically including one that investigated fishermen's indigenous knowledge.

²¹⁸ Lambert, G.I., Murray L.G., Hinz H., Kaiser M.J. (2014) – Status of scallop populations in Welsh waters. Bangor University, Fisheries and Conservation Report, No. 41.

²¹⁹ Pantin, J.R., Murray, L.G., Cambiè, G., Le Vay, L. & Kaiser, M.J. (2015). Escape Gap Study in Cardigan Bay: consequences of using lobster escape gaps. A Preliminary Report. Fisheries & Conservation report No. 44, Bangor University.

²²⁰ Haig, J.A.; Pantin, J.R.; Salomonsen, H. & M.J. Kaiser (2015). Size at maturity of the edible crab (*Cancer pagurus*) in Welsh waters. Fisheries & Conservation Science report No 51, Bangor University.

²²¹ Haig, J., Ryan, N.M., Williams, K.F. & M.J. Kaiser (2014) A review of the *Palaemon serratus* fishery: biology, ecology & management. Bangor University, Fisheries and Conservation Report No. 38.

²²² Haig, J. A; Pantin, J.R., Salomonsen, H, Murray, L. G. & Kaiser, M.J. (2015). The size at maturity for the common whelk, *Buccinum undatum* in Welsh waters, with an industry perspective on minimum landing sizes. Fisheries & Conservation report No. 50, Bangor University.

²²³ Cambiè, G., Kaiser, M.J., Hiddink, J.G., Salomonsen, H., Pantin, J.R., McCarthy, I. (2015). Population dynamics of the European sea bass (*Dicentrarchus labrax*) in Welsh waters and management implications Fisheries & Conservation report No. 56, Bangor University.

²²⁴ Pantin, J.R., Murray, L. G., Hinz, H., Le Vay, L. and Kaiser, M. J. (2015). The Inshore Fisheries of Wales: a study based on fishers' ecological knowledge. Fisheries & Conservation report No. 42, Bangor University <http://fisheries-conservation.bangor.ac.uk/wales/documents/42.pdf>

²²⁵ Skomer MCZ Annual Report 2016; <https://naturalresources.wales/media/681552/2016-smcz-annual-report.pdf>

As implied by the *Sustainable Fisheries for Wales* project title, sustainability of the fishing industry is the goal rather than the sustainability of the environment. Whilst the SOS work therefore only partly filled the research gap identified by SoNaRR, to date none of any relevant data collected appears to have been incorporated. Despite the caveats, it is hoped that such data gathering will continue in future and will be improved and made publicly available, though WG appears to have moved over to a procurement framework for science which enables work to be commissioned in various areas by competitive tender. This has resulted in the outsourcing of much science work rather than using its internal science team or its statutory environmental advisors, NRW, whilst the EU funding for the Bangor research ended in 2015. Whilst non-fisheries specific data collection methods for use by the fishing industry have had small-scale trials, such as the use of underwater cameras from fishing vessels for habitat surveys, it is unclear whether the resources are available to analyse the data or whether the quality of the data will be useful to managers²²⁶.

There are both strengths and weakness in the evidence base for other relevant sectors. Both NRW's 2016 State of Natural Resources Report (SoNaRR) and the WMER identify significant information gaps including understanding of ecosystem health, water quality and "*...our understanding of the extent, condition and trends of subtidal habitats, particularly in terms of how the extent and distribution of habitats has changed over time and outside of protected sites, where we have least knowledge*"²²⁷. The WMER even makes clear that a significant shortcoming is knowing what the gaps are: "*A key issue is defining the key evidence gaps that need to be filled in order to ensure appropriate decisions can be made about the exploitation of the marine environment in such a way that minimises impacts on biodiversity*". Whilst concern was expressed above regarding the quality and extent of fisheries data, there are other sectors for which no agency has the responsibility to collect data and for which little data is held at all, such as almost all recreational activities.

Of the information that is held, although some shows positive trends, much indicates ongoing declines in environmental quality. With respect to coastal and marine waters quality, only three of 22 Shellfish Waters met guideline quality standards in 2014 despite reported improvements in the most economically important shellfish waters²²⁸. Marine debris, particularly plastics, has become recognised as a significant problem that affects both biodiversity and commercial and recreational activities in the coastal and marine environment. Perhaps ironically, one of the most significant marine litter data sources are the annual reports from an environmental NGO, the Marine Conservation Society, which has been collating and reporting data collected by volunteers through their Beachwatch programme for the last 23 years.²²⁹ A further concern is that for many factors there is little recent information; for example, important and sensitive habitats such as maerl, horse mussel (*Modiolus modiolus*) beds, tidal rapids and sublittoral sands and gravels were

²²⁶ See <http://fisheries-conservation.bangor.ac.uk/> for the papers that have arisen from the EFF funded project.

²²⁷ Natural Resources Wales. 2016. State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources. Technical Report. Natural Resources Wales. Chapter 3. Summary of extent, condition and trends of natural resources and ecosystems in Wales, p74

²²⁸ Natural Resources Wales. 2016. State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources. Technical Report. Natural Resources Wales. Chapter 3. Summary of extent, condition and trends of natural resources and ecosystems in Wales, p68

²²⁹ Beach watch summary report 2016 https://www.mcsuk.org/media/cleanseas/GBBC_2016_Report.pdf

all reported as declining in condition in 2008, but no new evidence was available for preparation of the SoNaRR.

Although SoNaRR (2016) acknowledges that over-fishing may have led to the collapse of some Welsh fisheries in the past, such as South Wales's nineteenth-century oyster fishery²³⁰, the report has little to say on the contemporary inter-relationship of the impact of inshore fisheries on the inshore marine environment²³¹ and overall, SoNaRR reflects the massive gaps in marine data sets. NRW therefore seems to be unable to provide the M&FD with sufficient good quality scientific evidence on which to base its management decisions. Respondents to this research commented on the impact of budget cuts on NRW which had lost key staff and their expertise since 2013 which suggests that the collection of marine evidence collected via NRW may not improve in the near future.

Given that in 2013, The Minister had stated that *"I want our better evidence framework to enable new fisheries where possible, particularly for non-quota species: if fishermen identify a potential fishery, I want a fast track and clear process to see if it can go ahead as sustainable exploitation"*²³², this remains an unrealistically over optimistic aspiration at present. Since 2013, the way in which the evidence is collected has changed with a range of private non-governmental research bodies being asked to tender for the Fisheries and Marine Environmental Evidence Framework Agreement in order to collect and analyse fishery and marine environmental data in the Welsh Zone²³³. However, any data which might have been collected had not been fed into SoNaRR by autumn 2016.

In October 2016, the WG and NRW initiated a potentially valuable project to *"... undertake a structured evaluation of fishing activity interactions with features of Welsh Marine Protected Areas (MPAs)"*²³⁴. This should begin the process of ensuring that the WG begins to move towards improving the environmental status of EMS habitats and species to comply with obligations arising from Article 6 of the Habitats and Birds Directives. However, unlike in England, where all high-risk activities in sensitive areas have been closed, this has not occurred in Wales where individual Habitat Regulations Assessments of each activity are being undertaken, with an original end date of April 2017. However, there appears to be no commitment to close such areas if results indicate deterioration in a habitat, and unlike England, the precautionary principle is not being followed (pers comm. Senior Conservation Officer). Perversely, although the information therefore appears to be a way of predicting the impact of various types of fishing activities on marine environments, there is no commitment to use it to act on the evidence to improve management for conservation purposes.

²³⁰ SoNaRR 2016 available at <http://naturalresources.wales/media/679408/chapter-2-understanding-drivers-final-for-publication.pdf> accessed 19/12/2016

²³¹ SoNaRR (2016) Chapter 2 p22 does include a table taken from the 2011 UK National Ecosystem Assessment that shows the main driver on the marine environment since the 1940s has been over-exploitation.

²³² Minister of Natural Resources and Food (18/06/2013) Marine and Fisheries – Future Direction and Strategic Action Plan: Supporting Document in conjunction with the Ministerial Oral Statement

²³³ SPECIFICATION for Fisheries and Marine Environmental Evidence Framework Agreement
CONTRACT No. C 243/2012/2013

²³⁴ ABPmer, (2016). Assessing Welsh Fishing Activities - Phase 1, Principles and prioritisation report. ABPmer Report No R.2607. A report produced by ABPmer for Welsh Government, October 2016

9. THE NEW FISHERIES MANAGEMENT REGIME

“My ultimate ambition is that the Welsh Government co-manages our fisheries with stakeholders...”

Minister for Natural Resources and Food (18/06/2016) Marine and Fisheries – Future Direction and Strategic Action Plan: Supporting Document in conjunction with the Ministerial Oral Statement

Following the move by the WG to take the management of Welsh inshore fisheries in house in 2010, its intention was to create a participatory structure whereby relevant stakeholders would be able to express their opinions through newly created Inshore Fisheries Groups (IFGs). The information would then be analysed and discussed further within the simultaneously created Welsh Marine Fisheries Advisory Group (WMFAG) who in turn would make recommendations to the Minister. In theory, this would enable a participatory process to operate within a centralised system, but for it to be effective the information being passed upwards would need to produce results ‘on the ground’. The danger was that if this did not happen, fishermen and other stakeholders within the IFGs would become disillusioned and would view the participative process as a form of tokenism. While the creation of the three geographically determined IFGs went some way towards maintaining opportunities to identify area-based issues, the timescales in which decisions could take place compared to the previous regime were bound to be greater because of the increased bureaucracy required for it to perform its functions.

9.1 Inshore Fisheries Groups (IFGs)

Three IFGs were created covering north, mid and south Wales²³⁵. Comprised of representatives from fisheries associations, recreational fishermen, environmental interest groups, marine scientists, Seafish and Natural Resources Wales, their purpose was to:

- 1) Provide proposals to the Welsh Marine Fisheries Advisory Group (WMFAG) relating to fisheries management within the groups region of Wales
- 2) Assist the WMFAG to engage with those with interests in fisheries and the marine environment within the IFG region
- 3) Provide feedback to wider stakeholders within the IFG region on local policy implications.

Group members were expected to be able to:

- 1) Demonstrate they can represent a wide range of people for a particular interest (i.e. represent an organization)
- 2) Demonstrate, where possible, that they can represent more than one organization;
- 3) Demonstrate they can feedback to a wide range of stakeholders on local policy implications;
- 4) Demonstrate knowledge of and experience relevant to the fishing industry;

²³⁵ IFG meetings were suspended by the Head of Fisheries in November 2016

5) Demonstrate they are available to attend quarterly meetings of the regional IFG.

In the consultation period prior to the setting up of the new structure, Wales Environment Link (WEL), the umbrella body designated to act as the intermediary body between the government and the environmental NGO sector in Wales, supported the proposed changes, but warned that this depended upon the fact that “...membership of both the WMFAG and IFGs must be open, transparent, communicative and clear” ...and... “that the membership is equally weighted and all stakeholders are appropriately represented... We believe it is essential that a representative of the Marine Branch {of WAG} be included on the WMFAG. This is particularly relevant with regards to the current hpMCZ project and its interactions with fisheries” Finally,... “with regards to the interaction between WMFAG and the Minister, WEL feels that advice from both the IFGs and the WMFAG to the Minister, along with the associated minutes and agendas of meetings should be made publicly available”.²³⁶

Despite this, when set up, IFGs had “...little or no conservation remit” (pers comm. Conservation manager) and failed to appreciate the need to more closely integrate fisheries and conservation to achieve more holistic management objectives. Conservation interests were limited to two representatives on each IFG, one from WEL and one from NRW and were therefore heavily outnumbered by representatives from the Fisheries Unit and the fishing industry. In reality, CCW, and later NRW did not attend in their conservation advocacy role but as the statutory environment and nature conservation advisor, so in practice, the groups contained only one conservation interest. Unlike IFCAs, neither IFG nor WMFAG minutes are available on the WG website and had to be accessed via a Freedom of Information request for this study²³⁷. In addition, minutes are considered as a poor record and several interviewees reported that discussions which did not conform to the WG’s agenda were frequently misrepresented. Agendas, minutes of previous meetings and other papers were frequently circulated less than 48 hours before meetings, thus eliminating the possibility for representatives to canvass the members they are supposedly representing and undermining the whole basis of the stakeholder-led management structure (pers comm IFG and WMFAG members). Transparency is therefore very poor. In addition, no explanation was given if the Minister or Fisheries Unit / M&FD rejected WMFAG advice, pointing to a system of close control and centralisation of power within the upper echelons of the M&FD. The subsequent failure to address these concerns has had long-term consequences, for example with respect to the abandonment of the Highly Protected Marine Conservation Zone (hpMCZ) process, and repeated assertions by respondents to this research that the M&FD is extremely opaque and driven by top-down rather than bottom-up processes.

Further potential issues pointed out by WEL included the point that the creation of three IFGs rather than two SFCs would in some places lead to a division of shared fishing grounds between the newly created bodies, which could disrupt existing locally agreed management of communal fisheries resources common in inshore Welsh waters²³⁸. In addition, WEL stressed the need to

²³⁶ Response To WAG Proposals for Future Sea Fisheries Stakeholder Input Framework for Wales: Developing a Partnership Approach to Fisheries Management February 2010, available at: http://www.waleslink.org/sites/default/files/WEL_response_to_fisheries_consultation_Feb_2010.pdf Accessed 6/12/16

²³⁷ They have since been made available.

²³⁸ There is no evidence that this has occurred.

ensure that IFGs maintained strong links with neighbouring IFCAs to enable cross-border management agreements. Again, none of these issues were taken on board. The overall impression of this part of the process is that the WG failed to appreciate the value of the advice it was being given, whether from SFC officers or NGOs and failed to appreciate the dangers of not doing so.

Once the system was operating, further weaknesses were exposed. Arnstein outlines a 'ladder of participation' (Fig. 4) against which the IFG model might be judged²³⁹. At levels 1 and 2, powerful actors use forms of non-participation to impose their agendas. Participation as tokenism (levels 3 to 5) occurs when participants hear about interventions and may say something about them, which power holders denote as 'input'. However, the voices of participants are unlikely to have any effect on the intervention, especially if it challenges the status quo; thus participation does not lead to change. At levels 6 to 8, participation provides citizens with more power to negotiate and change the status quo. Their voices are heard and responded to.

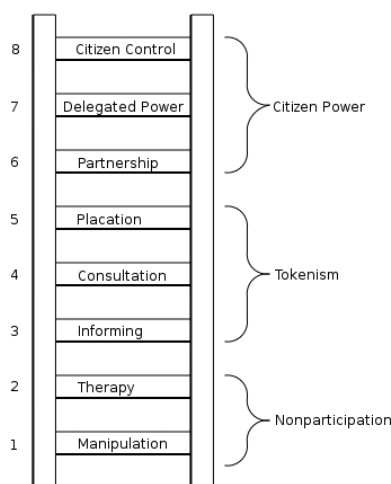


Figure 5: A ladder of citizen participation, Arnstein (1969)

Prior to the setting up of IFGs, it was emphasised that the aim of the new approach was to develop a partnership between the WG and its Fisheries Division and other stakeholders; indeed the fifth Goal of the Welsh Fisheries strategy is to develop 'partnership working' (2008)²⁴⁰. This implies level 6 on the ladder. Individuals who joined the IFGs believed that their ideas would, via the WMFAG, directly influence fisheries policy. However, the roles of the IFGs demonstrate that in practice, they had very little power to influence decision-makers because all ideas were filtered via WMFAG, which itself made very little progress.

By the spring of 2014, the IFG minutes began to reflect the level of frustration among fishermen who believed that their views had been ignored in the numerous consultations that had been

²³⁹ Arnstein, S. (1969) 'A ladder of citizen participation', *Journal of the American Institute of Planners* 35.4: 216–224

²⁴⁰ Welsh Fisheries Strategy 2008 p1 <http://www.fisheries.org.uk/080801walesfisheriesstrategyen.pdf> accessed 29/10/2017

initiated since 2010. Thus, it was stated that “...although issues had previously been discussed during meetings members felt that opinions put forward had been overlooked”²⁴¹. “Business related to conservation initiatives (e.g. the hpMCZ project) was...” *exclusively top-down, usually highly selective and very short briefings from WG officials. No discussion was allowed, just brief updates*” (interview comments from IFG and WMFAG members).

The actual level of participation at which IFGs were operating was therefore 3 or 4 on Arnstein’s ladder. This is further supported by the fact that analysis of the Mid-Wales IFG indicates that only nine per cent of the issues raised were initiated by outside stakeholders, compared to 91 per cent by the WG or M&FD. Over time, this mismatch between expectation and practice amongst IFG members led to disillusion with the process. *“In hindsight I think that the key shortcomings are that the IFGs are not a formal part of the management framework (no statutory role) and that they are not animated or facilitated forums. We simply turn up every quarter and get read whatever briefing notes the officers have been provided with. There is some discussion but generally it is undirected and I feel that this is a wasted opportunity to access informed advice from industry stakeholders”* (pers comm, Former IFG member). In addition, IFG members were given too little time to read the agenda before meetings, fisheries officers often failed to turn up to meetings and very little feedback was given relating to points of order from previous meetings (pers comms from two former IFG members, a fisherman and a conservationist)²⁴². Given this level of discontent, it is unsurprising that the system began to malfunction with the result that many fishermen stopped attending and in November 2016, IFG meetings were postponed indefinitely without warning or, initially, explanation.

Although informal stakeholder advisory groups such as IFGs may work effectively, “...the most effective co-management structures are those where fisheries stakeholders are an integral part of the management framework”²⁴³. This was clearly not the case in the post-2010 management regime.

9.2 The Welsh Marine Fisheries Advisory Group (WMFAG)

This is the body that sits between the IFGs and the Fisheries Unit and Minister. Its original roles are outlined below:

- 1) Provide expert advice to the Fisheries Unit and Minister for Natural Resources on issues relating to Fisheries Management;
- 2) Assist the Fisheries Unit to engage with those with interests in fisheries and the marine environment;
- 3) Feedback to the IFGs on national policy implications;
- 4) Represent the views of the IFGs at WMFAG meetings;
- 5) Monitor and evaluate the effectiveness of policies and strategies relating to fisheries management;

²⁴¹ Mid-Wales IFG minutes 06/05/2014 (Fol request)

²⁴² The first point is not fully supported by the IFG minutes, but the second point is.

²⁴³ Woolmer, A. (2009) Partnership approaches to fisheries management: lessons for Wales, WWF Cymru, p2.

6) Be closely linked to marine stakeholder structure and the Minister for Natural Resources.²⁴⁴ The WMFAG's function was to make recommendations to the WG Fisheries Unit based upon an analysis of the information raised in the three IFGs. However, *"It would be fair to say that that has had a bit of a bumpy ride for the first couple of years of its existence. There has not been an awful lot of progress in terms of recommendations made"*²⁴⁵. Whilst the WMFAG has been retained, it still appears to be relatively ineffective, and with the suspension of the IFGs its new role lacks clarity as there appears to be no mechanism to take on board the concerns of stakeholders who use the resources, whether as fishermen, or other groups whose interest may be linked to conservation, leisure or more esoteric reasons. In fact, IFGs were probably always too narrowly focused and the concept that the communal marine resources were of value to a wider community than those who relied on them directly for their livelihoods was never taken on board by the WG when it set up the management structure and remains a key weakness of the present regime. By August 2016, the WMFAG's six roles had apparently been simplified and reduced to one; *"to assist us in formulating appropriate policies, plans, strategies and law related to marine fisheries in Wales"*²⁴⁶. It still acted as an adviser but lacked any powers to directly influence policy i.e. the WG could ignore its recommendations, and although it has not suffered the same fate as IFGs, it does not share power with the WG and at best sits at four or five on Arnstein's ladder.

9.3 The Suspension of IFGs: November 2016

*"Moving forward we intend to expand the Task & Finish group's approach to help inform and drive priority workstreams being taken forward by the WG M&FD. Membership of the Task & Finish groups will be carefully considered and will include relevant representatives of the fishing industry in addition to NGOs, NRW, academics and experts and community representatives. The new approach means that we can ensure that we are making the most of everyone's time by ensuring people have the opportunity to engage at the right time with the issues in which they have an interest. Priorities will be discussed and regularly reviewed by the WMFAG to inform final decisions by the Cabinet Secretary for Environment & Rural Affairs. Current members of the IFGs will continue to receive regular progress reports on delivery of Welsh Government priorities"*²⁴⁷.

Andy Fraser, Head of Fisheries, 31/10/2016

WMFAG members also agreed that industry representation should be enhanced looking ahead. However, it is doubtful whether this development will create a structure whereby the views of

²⁴⁴ <http://www.wwsfa.org.uk/about/representation/> Accessed 11th November 2016

²⁴⁵ Jim Evans, Welsh Fishermen's Association evidence to Environment and Sustainability Committee, 6/02/2014, p20, available at

<http://senedd.assembly.wales/documents/s24218/6%20February%202014.pdf> accessed 14/12/2016

²⁴⁶ <http://gov.wales/topics/environmentcountryside/marineandfisheries/stakeholder-engagement/welsh-marine-fisheries-advisory-group/?lang=en> accessed 19/12/2016

²⁴⁷ Andy Fraser, Head of Fisheries, 31/10/2016 to IFG members eight days before next IFG meeting with no prior warning to them

stakeholders will be transmitted more easily or in a more timely fashion to the ultimate decision-makers, because with the demise of IFGs, it has become even more remote from them and the WG has not established a clear line of communication to them. In addition, there now appears to be a clear intention to develop agendas based on what is perceived as important by the WG and the new approach appears to be more top-down than before the change occurred. The commitment to partnership appears to be diminished as the Head of Fisheries clearly implies that the *raison d'être* of Task and Finish Groups are to be responsive bodies rather than proactive ones.

To counter this rather negative assessment of recent changes, the WG has set out its policy on stakeholder engagement.²⁴⁸ However, this document suggests it was still seeking advice on how best to consult with stakeholders six years after it had taken responsibility for management, with pledges that its approach would be based upon participation with them. The 2013 Welsh Marine and Fisheries Strategic Action Plan states that *"In his June statement, the Minister signalled his intention to develop a co-management approach with the fishing industry as set out in the Welsh Fishermens Association's document "Striking the Balance". The WFA is now seeking to implement a regional co-management approach, based on the principles of the Marine Strategy Framework Directive, on the Llyn peninsula"*²⁴⁹.

The Welsh Fishermen's Association (WFA) claims to be the national representative body of the Welsh fishing industry²⁵⁰ and its members played a prominent role in the IFGs and WMFAG²⁵¹. However, it has been criticised for lack of communication between itself and the fleet, for example there is no regular newsletter and the WFA is unwilling to critique M&FD, and in so doing, it has lost the trust of some of its members (pers comm fishermen). It has certainly been unable to utilise its webpages to keep members up to date with issues raised in IFGs and WMFAG meetings, which probably reflects a lack of resources to enable it to do so, although had this been used, it's likely it would have improved communication between the post-2010 management regime and the membership. However, this would have exposed the lack of progress being made by the M&FD, which is unlikely to have been welcomed.

²⁴⁸ WG Marine and Fisheries (31st August 2016) Stakeholder Engagement available at <http://gov.wales/topics/environmentcountryside/marineandfisheries/stakeholder-engagement/?lang=en> accessed 19/12/2016

²⁴⁹ Wales Marine and Fisheries Strategic Action Plan (2013) Welsh Government, p13

²⁵⁰ <https://welshfishermensassociation.wordpress.com/>

²⁵¹ THE WFA has representatives from the following regional fishing association on its management committee; South and West Wales Fishing Communities Ltd; Cardigan Bay Fisherman's Association Ltd; Llŷn Pot Fishermen's Association; Llyn Fisherman's Association; North Wales Fishermen's Co-operative <https://welshfishermensassociation.wordpress.com/>

10. THEORETICAL INSIGHTS INTO COMMUNAL RESOURCE MANAGEMENT

Given that we are considering common pool resources, what theoretical insights exist that should guide decisions concerning the appropriate scale at which fisheries management should occur? The classic theory, Hardin's *Tragedy of the Commons*, suggests that communal resources are subject to the inevitability of over-exploitation and destruction because of the inability of the users of the resource to resist short-term profits over long-term sustainability. However, this theory applies to open access resources where no controls exist over numbers accessing the resource and where no attempt is made to monitor the resource or place restrictions on whom, when and how it should be used.

Even where rules and regulations apply to common pool resources, this may not prevent their over-exploitation and degradation, but it is possible to achieve a situation where these risks may be minimised.

The Institutional Analysis of common property resources, associated most closely with Elinor Ostrom, based on the study of many different types of communal resources has identified eight Principles for managing common pool resources in a sustainable manner:

Table 5: OSTROM'S DESIGN PRINCIPLES FOR MANAGING COMMON POOL RESOURCES²⁵²

- **Clearly defined (clear definition of the contents of the common pool resource and effective exclusion of external un-entitled parties);**
- **The appropriation and provision of common resources that is adapted to local conditions;**
- **Collective-choice arrangements that allow most resource appropriators to participate in the decision-making process;**
- **Effective monitoring by monitors who are part of or accountable to the appropriators;**
- **A scale of graduated sanctions for resource appropriators who violate community rules;**
- **Mechanisms of conflict resolution that are cheap and of easy access;**
- **Self-determination of the community recognized by higher-level authorities; and**
- **In the case of larger common-pool resources, organization in the form of multiple layers of nested enterprises, with small local CPRs at the base level.**

Additional factors that are required for successful management of self-organised governance include effective communication and internal trust within the user group²⁵³. The 'Principles' emphasise the need for users of the resource to be active in the setting of rules, monitoring of use and generally to be given a high level of autonomy by higher level authorities.

²⁵² Ostrom, E. (1990). *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press. ISBN 0-521-40599-8. Other design principles exist, but take a broadly similar approach. For example, see: Hannah, S., Folke, C., Maler, K.G., 1995. Property rights and environmental resources. In: S. Hannah and M. Munasinghe ed. *Property rights and the environment: Social and ecological issues*, Washington, DC Beijer International Institute of Ecological Economics and The World Bank, pp. 15–29; E. Pinkerton, M. Weinstein, (1995) *Fisheries That Work: Sustainability Through Community-Based Management*, David Suzuki Foundation, Vancouver, BC

²⁵³ Janssen, P. and, Ostrom, E. (2010). *Working Together: Collective Action, the Commons, and Multiple Methods in Practice*. Princeton University Press.

Challenges have been raised to Ostrom's approach, the key weakness of which is that it ignores the contextual background in which the resource regime must operate²⁵⁴. Contextual factors are defined as "*dynamic forces constituted in the user groups' social, cultural, economic, political, technological and institutional environment*"²⁵⁵.

The structure of the Welsh inshore fishing industry represents a key contextual challenge to successful co-management regimes, as their success rate has been linked to the commitment and dependency of individuals on the resource. Given the high percentage of part-time fishermen in Wales, this has the potential to reduce the chances of success, because if a resource begins to fail, individual resource users commit more time to other income earning activities rather than attempting to improve the management of the shared resource²⁵⁶, which will continue to degrade.

²⁵⁴ Klooster, D. (2000) Institutional choice, community and struggle: a case study of forest co-management in Mexico, *World Development*, 28 (1), pp. 1–20; Husain, Z. and Bhattacharya, Rabindra N. (2004) Common pool resources and contextual factors: Evolution of a fishermen's cooperative in Calcutta, *Ecological Economics*, Volume 50, Issues 3–4, pp 201–217

²⁵⁵ Edwards, V.M. and Steins, N.A. (1999) Special issue introduction: the importance of context in common pool research, *Journal of Environmental Policy and Management*, 16, pp. 195–204 cited in Husain, Z. and Bhattacharya, Rabindra N. (2004) Common pool resources and contextual factors: Evolution of a fishermen's cooperative in Calcutta, *Ecological Economics*, Volume 50, Issues 3–4, pp 201–217

²⁵⁶ Husain, Z. and Bhattacharya, Rabindra N. (2004) Common pool resources and contextual factors: Evolution of a fishermen's cooperative in Calcutta, *Ecological Economics*, Volume 50, Issues 3–4, pp 201–217

11. THE PERFORMANCE OF THE POST 2010 MANAGEMENT REGIME

11.1 Achievement of main goals

11.1.1 Fisheries management: evidence from secondary sources

The overall impression from analysis of IFG and WMFAG minutes is that progress on all aspects of fisheries management was glacially slow. Although the IFG structure had... *“great potential, there has been very little clear output from these groups to date (2012). The Wales Fisheries Strategy (2008) has suffered a similar fate to that of the Wales ICZM Strategy discussed earlier. This ambitious strategy, with its accompanying Implementation Plans, has seen very limited progress in terms of delivery”*²⁵⁷. This was commented on in many IFG minutes, but by early 2015, the North Wales Fishermen’s Cooperative representatives on the IFG were *“...extremely frustrated at the lack of progress on several issues...and felt their association would have to look at membership of the IFG as they felt nothing was being achieved”*²⁵⁸. M&FD officials acknowledged these frustrations, but they appeared to be unable to make progress to overcome them²⁵⁹. Too many unresolved issues led to confusion and a lack of progress in any area. *“Members of North Wales IFG raised concerns over ongoing fisheries work and felt that more should be done to ensure existing recommendations are completed before moving on to others”*²⁶⁰. In response, the Chair of North-Wales IFG stated that he believed that this issue would be resolved by a newly created ‘Fisheries Management Board’²⁶¹, but even this initiative failed to make IFGs more effective, eventually leading to their suspension in autumn 2016.

A key issue was that concerns raised by members of IFGs were not followed up within M&FD and the same issues keep reappearing in IFG minutes over the whole period. Understandably, this led to growing frustration among IFG members and becomes increasingly apparent from many of the minutes of all IFGs, especially from 2013 onwards. Examples included recommendations on issues relating to crawfish management around the Llyn Peninsula and inactivity on introducing 24 hour dedicated telephones to report fisheries offences. It can be summed up by the following quote *“people were fed up of responding to consultation for various reasons, i.e. not receiving a hard copy, having to respond via email, comments not being considered”*²⁶². Whilst some of the issues might appear trivial, they indicate a lack of empathy with the working reality facing many fishermen but, more importantly, a failure to recognise their own lack of responsiveness to IFG member suggestions which gave the impression that the WG was a black hole which sucked in information but provided very little in return.

Given the poor data available for much of the Welsh marine environment, M&FD staff and others made frequent appeals to fishermen to provide catch data, providing evidence to enable officials

²⁵⁷ WWF evidence to the Environment and Sustainability Committee, 21/09/2012

²⁵⁸ North Wales IFG Minutes 29/01/2015 (Fol request)

²⁵⁹ North Wales IFG minutes 04/02/2016 (Fol request)

²⁶⁰ North Wales IFG minutes 30/04/2015 (Fol request)

²⁶¹ The Fisheries Management Board is mentioned for the first time in North Wales IFG minutes 30/04/2015. It had already met twice by that time to “discuss priorities in fisheries management”. It was designed to make IFGs and WMFAG “work better” (North Wales IFG Chair). No details were given as to its make-up.

²⁶² South Wales IFG minutes 15/05/2014 (Fol request)

to have more information to support UK discussions on quota allocation, in order to input data on a range of scientific surveys such as bass and whelks. However, consultation response rates were poor and were a factor in the slow progress of revising crustacean legislation. It also affected changes to the ability of the WG to change byelaws in areas such as the Dee estuary²⁶³.

Ironically, when fishermen approached M&FD with information to help improve fisheries management, higher management ignored such suggestions. For example, respondents to this research mentioned that M&FD failed to acknowledge English initiatives such as Navigating the Future²⁶⁴ which had been placed before them as possible solutions to Welsh inshore fisheries management problems and the principles of which have been widely adopted in England. However, this initiative elicited “no response” (pers comms. Welsh fisherman; marine conservationist), which suggest an unwillingness to embrace new ideas at a time when new management were struggling to come to grips with their new responsibilities.

Further criticisms indicate that by 2014 IFG members had become disillusioned with the role of IFGs. Members of the mid Wales IFG felt the groups were losing focus and no longer understood their purpose. This was felt by members of all IFGs and demonstrates the lack of influence of ordinary members four years after the IFGs had been set up. Other issues raised included the time taken for issues raised by IFG members to be addressed by the M&FD, the fact that many issues had not been followed up and a general sense that communication between the M&FD and the industry was malfunctioning. This seemed particularly acute amongst the North and South Wales IFG membership, where they felt increasingly “frustrated at the time taken to get things done”²⁶⁵. These issues reflected the lack of urgency shown by officials which eventually led to frustration with the whole process by members of all IFGs. IFGs members and other stakeholders were unable to overcome the bureaucratic inertia that seems to have gripped the M&FD since its creation.

A major frustration clearly apparent in IFG and WMFAG minutes is the lack of progress in reviewing SFC byelaws and conversion to Fisheries Orders. In 2010, the WG set out priorities to amend all of the existing bye-laws, with the objective of turning them into new fisheries Orders. However, by 2015 very little progress had been made. Given the fact that one of the keys to good fisheries management is sound legislation, this lack of progress represents a major weakness in the post-2010 regime; the apparent inability of the WG to address often local issues through the alteration of specific bye-laws, which was a source of frustration for the IFGs²⁶⁶ and WMFAG: “.../ sit on the Wales Marine Fisheries Advisory Group. Pretty much at every single meeting, we have discussions about whether progress is going to happen and when it’s going to take place”²⁶⁷. The question of legislative review was raised in 2012 where it was stated that “...a deadline has been

²⁶³ North Wales IFG minutes 30/04/2015 (Fol request)

²⁶⁴ Dapling T.M., Clark R.W.E., & Vause B.J., Medley, P., C.R.C. Carleton (2010). ‘Navigating the Future’. Developing Sustainable Inshore Fisheries. The UK Inshore Fisheries Sustainability Project Summary Report. Sussex Sea Fisheries Committee, Shoreham-by-Sea. Sussex.

²⁶⁵ South-Wales IFG minutes 15/05/2014 (Fol request)

²⁶⁶ E.g. North Wales IFG minutes 23/07/2015; 15/10/2015 (Fol request)

²⁶⁷ Gareth Cunningham, Marine Policy Officer, RSPB Cymru, evidence to the Environment and Sustainability Committee, p19 <http://senedd.assembly.wales/documents/s37267/26%20February%202015.pdf> Accessed 12/12/2016

set for 5 years"²⁶⁸. However, by 2015 only one major piece of legislation has been amended; the Specified Crustaceans (Prohibition on Fishing, Landing, Sale and Carriage) (Wales) Order 2015 was the only new Order created by the WG since it had taken responsibility for fisheries and the deadline for further changes appears to be unlikely to be achieved.²⁶⁹

Issues concerning the aquaculture sector were highlighted, perhaps the most important of which is the revoking of management plans and the several and regulating Orders at short notice, which have severe implications for the long-term stability of aquaculture businesses as they reduce security of tenure in the industry, reducing incentives for long-term investment. Such issues have arisen despite dialogue with the fisheries department; *"...we found it very disappointing that none of the points that we made were actually noted in any way. In addition, there was an impression that since 2010, what had changed is that Wales, all of a sudden, has been given extended powers to make fisheries legislation. I think that there is a feeling that, to some extent, we are not complying with the 'If it's not broken, don't fix it' approach. It is more that there is a power there and a feeling that 'We've got the ability to change it, so let's change it'. That is a real issue for us."*²⁷⁰ This opinion that the post-2010 regime was a result of, and driven more by, the desire of the WG to extend its power into new areas of governance, rather than the wish to improve management based on sound marine management principles, was mentioned by over a half of the respondents to this research.

It was also apparent that problems persisted with other aspects of fisheries management, especially with respect to transposed legislation, so that it was unclear whether the WG could use emergency measures to close certain fisheries for 12 months if they were being over-fished because they did not have the Orders in place. *"So, it would be very useful if we could find out where they stand"*²⁷¹. Thus, the issue of the WG transferring executive responsibilities without transferring legislative competence had apparently led to a situation where it had the responsibility but not the power to change legislation quickly which reduced its impact to manage Welsh fisheries effectively.

A lack of resources for fisheries management was first identified in the first update of the Welsh Fisheries Strategy which concluded that *"there were too many high-level actions for key individuals which could not be achieved"*²⁷². This WG assessment indicates that within a year of taking over the management of fisheries, the WG believed that it had inadequate resources to do

²⁶⁸ South Wales IFG minutes 29/02/2012 (Fol request)

²⁶⁹ The Specified Crustaceans (Prohibition on Fishing, Landing, Sale and Carriage) (Wales) Order 2015. <http://gov.wales/topics/environmentcountryside/marineandfisheries/SeaFisheries/commercialfishing/compliance-monitoring/crustacean-legislation-review/?lang=en>

²⁷⁰ James Wilson, Bangor Mussels Producers Ltd evidence to the Environment and Sustainability Committee, 6/02/2014, p16, <http://senedd.assembly.wales/documents/s24218/6%20February%202014.pdf> Accessed 14/12/2016

²⁷¹ Gareth Cunningham, Marine Policy Officer, RSPB Cymru, evidence to the Environment and Sustainability Committee, p19 <http://senedd.assembly.wales/documents/s37267/26%20February%202015.pdf> Accessed 12/12/2016

²⁷² WMFAG Minutes 24/10/2011 (Fol request)

the job properly, despite the fact it had increased them considerably compared to those available to the two SFCs²⁷³.

A lack of detailed information on fisheries resources is a key weakness that has been highlighted by every respondent to this research. *"Information is minimal and we need to look at resources to fill those identified gaps as otherwise the management plan will collapse"*²⁷⁴. Compared to SFCs, the lack of detailed landing data is clear, and the main option used by M&FD, namely to ask fishermen to voluntarily declare their catches, has failed, partly because of the lack of trust between most fishermen and the M&FD. Ultimately it reflects a failure to assign sufficient resources to the task and brings into question how the M&FD prioritises its expenditure given the fact that the monitoring of catches is one of the fundamental planks of sound fisheries management.

11.1.2 Evidence from respondents to the research (Have the issues been addressed?)

Many of the responses in the previous section related to the period 2010-2015. The survey provided an opportunity to see whether the issues outlined in the IFG and WMFAG minutes and other sources had been resolved. Respondents frequently commented that IFGs were still not a formal part of the management framework (no statutory role) and they were simply *"talking shops"* (pers comm. Former IFG member). The perception remained that *"The inshore fishery groups set up to replace the old SFCs are a joke, they have no powers whatsoever"* (pers comm. Former IFG member). This relates to the feeling that IFGs had been sold to their members with an expectation that they would be able to have a direct influence over the development of fisheries and marine management policy. However, this had not materialised, so many IFG members felt they had wasted much of their time preparing for, travelling to and from and attending what were ultimately unproductive meetings.

In addition, IFGs were still perceived as passive recipients of pre-determined top-down management decisions: *"We simply turn up every quarter and get read whatever briefing notes the officers have been provided with. There is some discussion but generally it is undirected and I feel that this is a wasted opportunity to access informed advice from industry stakeholders"* (op cit; pers comm. Former IFG member). This had been acknowledged by the WG after the first review in 2013 with a recognition of the need *"to have more, inclusive, constructive communications between the group and the WG"*²⁷⁵, although this also required better communication between fishermen and their representatives on the IFGs. Many consultations had not been productive in the previous two years, reflecting the difficulties in engaging with fishermen. This may also be linked to the fact that fishermen see themselves as independent small businesses and, apart from those who are on the committees, there is little identification with any industry group. The isolated nature of their work tends to exacerbate this and leads to a similar relationship between individual fisherman and representative to that encountered in agriculture. It was also felt that WFA members had become too close to M&FD officers and were unwilling or unable to challenge them.

²⁷³ See section 11.5

²⁷⁴ WMFAG Minutes 24/10/2011 (Fol request)

²⁷⁵ Mid-Wales IFG minutes, 13/09/2013 (Fol request)

A continuing weakness in IFGs was that members were not appointed after an application process and therefore did not need to be “able to bring something to the party” (pers comm. Former IFG member) i.e. there was little if any attempt to select representatives based on their past achievements and their subsequent effectiveness in IFGs was often of very limited value. The feeling was expressed that too many IFG members lacked sufficient knowledge of key issues and because of this were unable to interrogate WG representatives with sufficient rigour and in that way expose weaknesses in their approach. This reinforces the belief that IFGs may not have selected the most well-qualified representatives when first set up. Whilst it is apparent that many representatives have become more effective over time, none of the Chairs have effectively challenged the method of working of IFGs and the M&FD which may reflect a certain degree of political naivety amongst the group or a failure to maintain a critical space between themselves and the M&FD.

Some respondents argued strongly that there had been serious mishandling of the Welsh quota. In 2012 the WG signed a concordat on management arrangements for fishing quotas and licensing in the UK²⁷⁶. This shared out the under 10 metre fishing vessel quota between the UK’s four constituent countries based on track record. In the UK, the quota for under 10 metre vessels represents 1.6 per cent of all UK quota, despite the fact they make up 77 per cent of the UK fleet²⁷⁷. The under 10 metre quota is especially important in Wales because this size of vessel makes up 93 per cent of the Welsh fleet²⁷⁸. Because of the small size of the under 10 metre quota and the poor record keeping by this group with respect to landings, the amount of quota assigned to this sector in Wales is negligible with this quota based on six boats²⁷⁹. *“Signing the Concordat was a terrible mistake for the industry and it has pretty much painted it into a corner with no options for diversification. It currently relies on non-quota species such as Bass, Brown Crab, Lobster and Whelks. These are already showing signs of over fishing - Bass has crashed (EU wide issues), and the whelk fishery is creaking with increasing effort. Combine this with the apparent inability of the WG to introduce anything but the most uncontentious measures and it does not look too good for the future of these fisheries”* (pers comm. Fisherman). This quote also reveals the extent to which some fishermen are aware of the pressures on key commercial stocks, which contradicts the more up-beat assessment that frequently comes from the WG.

²⁷⁶ <https://www.gov.uk/government/publications/concordat-on-management-arrangements-for-fishing-quotas-and-licensing-in-the-uk>

Under the Concordat, DEFRA, the Northern Ireland Executive, the Scottish Government and the Welsh Assembly Government are allocated annually agreed shares of UK quotas for distribution to their fleets. These allocations will, as now, be based on Fixed Quota Allocation Units (FQAs).

There is no permanent split of UK quota and fishing vessels will continue to be free to move their operations to another part of the UK. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69547/pb13771-fish-concordat.pdf and revised version at https://consult.defra.gov.uk/fisheries/consultation-on-revised-fisheries-concordat-and-mo/supporting_documents/161207%20Concordat%20revision.pdf Accessed 21/06/2017

²⁷⁷

The New Under Ten Fishermen’s Association (private correspondence)

²⁷⁸ Marine Management Organisation (2016) UK Sea Fisheries Statistics 2015, available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555665/UK_Sea_Fisheries_Statistics_2015_full_report.pdf Accessed 18/12/2016

²⁷⁹ The New Under Ten Fishermen’s Association (private correspondence)

One area identified as a major weakness compared to the IFCA regime is the *“The lack of an annual Marine and Fisheries Plan”* (Member of IFG). Linked to plans are the need for annual reviews. *“The lack of an annual review makes it difficult for outsiders to judge the progress against internally set opaque targets”* (pers comm. Fisherman). Had such annual plans and reviews been undertaken, the lack of progress should soon have become more apparent and this would have enabled closer and more critical evaluation of M&FDs performance to have been undertaken by politicians and other stakeholders. It is unlikely that the pace of change would have been so slow had external oversight had access to such a document.

Many respondents commented on the loss or misuse of experienced officers when the change of management occurred and made the point that replacement of the SFCs led to a replacement of too many experienced people, and although some were retained, they appear to have been marginalised and their institutional and local knowledge is not recognised within the M&FD. Instead the department needs to be *“staffed by people with relevant knowledge and experience in fisheries and conservation management and enforcement. Delivery is everything in fisheries management and we desperately need some delivery”* (pers comm. Fisheries consultant).

The current regime is also perceived as being overly bureaucratic, so decisions that need a rapid response are slowed down through an overly legalised system. *“Meaningful conversations with Welsh Fisheries officials are impossible, all questions must be referred back to their lawyers, no one will take responsibility for decision making”* (pers comm. Fisherman). The consequences of this are that it has resulted in a *“lack of fisheries orders in Wales, refusal to grant certain licences and so on. This is ironic given the Welsh Government’s commitment to “Blue Growth”* (pers comm. Aquaculture fisherman). It also indicates that many of the original concerns over the inflexible and slow-footedness of a centralised management system did materialise as predicted by those opposed to the change.

This slowness to respond to other initiatives was also raised by the WFA who argued that this had deprived their members of opportunities to apply for support from the European Fisheries Fund²⁸⁰, although this was refuted by the Head of the M&FD who argued that it had been due to external factors outside the control of the Division.

Shortly prior to the suspension of IFGs, all IFG members were asked to comment on the strengths and weaknesses of IFGs²⁸¹. Of the 39 identifiable points made, 90 per cent were negative with only ten per cent positive. As the issues have been discussed previously, they will not be repeated, but the overwhelming evidence is that after five years, one of the principal planks of WG inshore fisheries management had failed. With respect to fisheries management, the overall impact of the post 2010 changes might be represented by the following quote: *“For us, everything has changed for the worse”* (pers comm. Aquaculture operator).

However, the new regime has enabled groups such as the Welsh Federation of Sea Anglers to have an apparently more significant role on the IFG and WMFAG, although their impact appears

²⁸⁰ Welsh Fishermen’s Association evidence to the Environment and Sustainability Committee, p50, 26/03/2015 available at: <http://senedd.assembly.wales/documents/s38687/26%20March%202015.pdf> Accessed 12/12/2016

²⁸¹ North Wales IFG minutes 15/09/2016 (Fol request)

to have been minimal and their representatives are motivated more by being kept up to date, than with any hope that their input will influence decision making (pers comm. Sea Angling Representative).

11.2 Management for nature conservation and environmental protection

The WG's performance in delivering management of its MPAs is described in section 7. Following its failed proposals and consultation on designating MCZs, the WG has chosen not to exercise the powers granted to designate further MCZs, or those it inherited to manage its only MCZ, or to proactively pursue management measures to meet the conservation objectives of EMS after MCAA. Although Skomer MCZ was designated in 2014, no progress has been made on the three to four MCZs that had been the target in 2012, but which were subsequently discarded in July 2013, despite repeated written ministerial statements reiterating the WG's continued commitment to completing the ecologically coherent network of well-managed MPAs ²⁸².

11.3 The closeness between the commercial fishing sector and M&FD

The corporate views and wishes of the commercial fishing sector appear at risk of having a disproportionate influence on M&FD decisions. Marcus Coleman, CEO of Seafish Wales recommended *"defining a tangible vision for the (Welsh Seafood) Strategy, such as 30 per cent growth for the sector"* (although no timescale was given), and The SeaFish Wales Advisory Committee agreed that *"...a Strategy for the seafood sector in Wales should be independent and industry-owned"*. Whilst the Head of the WG's M&FD was present at this meeting, neither of these statements were challenged and at no time was any mention made of the need for enhanced marine conservation measures to achieve the first target, although reference was made to the need for improved fisheries management ²⁸³.

11.4 Resources and cost effectiveness

As early as 2012, concerns were being expressed by external relevant stakeholders about the lack of progress. One argument was that insufficient resources had been assigned to the tasks as exemplified by the following statement: *"A barrier to its implementation²⁸⁴, in our view, has been the limited priority afforded to it by government and that key delivery partners, are under resourced"* ²⁸⁵. The lack of resources was also identified in an early strategy review by an

²⁸² On 02/05/2017, a written WG statement stated that the Cabinet Secretary is committed to completing the ecologically coherent network, but it commits only to further designation but not to effective management.

²⁸³ http://www.seafish.org/media/1644042/swac_meeting_minutes_30-03-16_draft_for_swac_approval.pdf

Accessed 19th August 2016.

²⁸⁴ The post-2010 management regime

²⁸⁵ WWF evidence to the Environment and Sustainability Committee, 21/09/2012

independent consultancy that concluded that there were too many actions to complete in too short a timeframe²⁸⁶.

However, this appears not necessarily to be due to a lack of resources, but more down to an inability to effectively use the expanded resources that had been provided to the new managers. An analysis of SFC costs from published annual accounts indicates that approximately 27 per cent of costs that SFCs covered as part of their budgets lies outside of the current £2.06m annual declared WG M&FD spend. In common with all civil service departmental expenditure, these additional costs include obligatory employment costs (such as National Insurance, pension payments) and essential support costs (for HR, H&S, IT, premises, legal and administrative support etc), all of which are covered by WG central funds rather than departmental budgets, and are presumed to apply equally to WG fisheries services as they did for SFCs. In fact, civil service overheads are likely to be more expensive than SFCs which were noted for making a virtue out of parsimony.

If these essential costs were to be added, this gives an estimated total cost for WG M&FD of £2,676,200 for 2016/17, rather than £2.06m. By comparison, based on the last set of SFC levies in 2009/10, the combined Welsh SFCs spend amounted to only £1,144,533 per year (SWSFC £675,816 + 51% of NW&NWSFC £468,717). Uplifted for inflation (10 per cent) the equivalent SFC cost would now be £1,258,986. i.e. WG M&F £2,676,200 vs prospective Wales SFC cost of £1,258,986. This is slightly more than twice the indexed SFC figure.

In making the above comparison it is important to make further allowances for the fact that:

- (i) The M&FD expenditure figure covers marine as well as fisheries staff²⁸⁷
- (ii) The work of M&FD is broader than of the old SFCs and a limited number of staff work on other business e.g. part managing EU grant (EMFF), on aquaculture, inland fisheries and food.
- (iii) When IFCA in England were first established, DEFRA included a limited term grant to supplement the local authority levies for new burdens relating to expectations that might arise from broader responsibilities associated with managing sea fisheries resources and marine protected areas.²⁸⁸ However, unlike IFCA, there is no evidence that WG M&FD has endorsed these new responsibilities or has done anything different to that of the work of the old SFCs under previous legislation. So, to do so might be expected to incur additional cost.
- (iv) Around £75,000 of the M&FD budget currently paid annually to NRW to support them in running the licenced Burry Inlet Cockle fishery. This supplements revenue received from licence fees which are inadequate to meet full running costs. Indeed, NRW are believed to have made a case for this subsidy to increase. Whereas, the SWSFC managed this fishery using licence fees with a minimal subsidy from within its

²⁸⁶ Mid-Wales IFG minutes 20/09/2011 (Fol request)

²⁸⁷ It has not been possible to ascertain what part of the current budget goes to the Fisheries Unit as opposed to the smaller Marine Unit; the Department would not engage in such discussions that would have elucidated these figures and FoIA information did not show any breakdowns.

²⁸⁸ (Section 153 M&CAA, 2009)

£675,816 annual budget, the £75,000 therefore represents an additional financial burden on the WG's budget when compared to the SWSFC.

In conclusion, the failure to make progress cannot be down to a lack of resources and since 2010, M&FD appear to have made little progress compared to the pre-2010 management regime, despite receiving more funding overall.

11.5 Cross border issues

"I want us to be ambitious for Wales; to learn from Ireland, indeed to work with them where it makes sense, and to learn from others"

Minister for Natural Resources and Food (18 June 2013), Marine and Fisheries – Future Direction and Strategic Action Plan: Supporting Document in conjunction with the Ministerial Oral Statement.

In July 2015 George Eustice, the UK Minister of State, Department for Environment, Food and Rural Affairs, stated *"I have not had any direct dealings with counterparts in Wales within the Dee Estuary fisheries management context or specifically in relation to the closure of the cockle beds"*²⁸⁹. The issue of cross border cooperation is crucial with respect to fisheries management and issues such as the development of Marine Planning. The Dee Estuary is a cross border fishery which is managed by the WG and NRW for the Welsh part of the estuary. For the English part of the estuary, fisheries management is covered by DEFRA, the Environment Agency, the Marine Management Organisation, and the North West Inshore Fisheries and Conservation Authority (IFCA). However, NRW has responsibility for managing the cockle fishery in the Dee Estuary (on both the Welsh and English sides) as grantee of the Dee Estuary Cockle Fishery Order 2008²⁹⁰, so the lack of liaison between the Welsh and UK Governments is puzzling and of great concern. Former SFC fisheries officers have commented on the regular liaison that used to occur with neighbouring SFCs, whether they were in England or Wales, which contrasts strongly with the post-2010 situation.

Discussions with representatives from one of the two IFCA's that border Wales indicate that such lack of dialogue is not unusual. The point was made that *"Before 2010, we used to speak regularly to SWSFC. The Chief Officers Group met regularly. In 2011 a request was made to the WG to co-ordinate byelaws, but no replies were forthcoming"* (pers comm. Senior manager, IFCA). This demonstrates a serious deterioration in cross-border liaison since 2010, though that may be due to a lack of resources, (undermined by the analysis in section 9.4) within the M&FD which consequently might not have been able to prioritise cross-border issues, though micromanagement and considerably more bureaucracy has also been blamed for the decline in such cross-border dialogue (pers comm. Former sea fisheries officer).

²⁸⁹ George Eustice, 2/07/2015 (Hansard) <https://www.theyworkforyou.com/wrans/?id=2015-06-29.4715.h&p=24933>

²⁹⁰ NRW also manages the Burry Inlet cockle fisheries, both are managed by Regulating Orders.

The reason for the lack of follow-up to a number of subsequent attempts at communication was claimed to be that “...we do not know who to speak to with respect to specific site management. The information is not provided publicly. WG fisheries is a very opaque system. In addition, there appears to be rapid and large changes in personnel”. (pers comm. Senior Manager, IFCA). One of the potential impacts of this lack of liaison was that “If we could work properly with the WG we could have a joint FPV {fisheries protection vessel} covering both sides of the border” which would cut costs. Whilst individual WG Fisheries Officers have shown initiative and are keen to be partners with the IFCA on cross-border issues, “...there does not appear to be the resources available to enable them to do so” (pers comm. Senior Manager, IFCA). In addition, because of lack of co-ordination and a failure to develop a strong working relationship with IFCAs, the WG M&FD now appears isolated and “is missing out on the regular sharing of technical information, research ideas and methodologies that is now occurring between IFCAs” (pers comm Senior Conservation Officer, IFCA). These occur every three months with representatives from the Isle of Man and Channel Islands in attendance. At officer level, the technical science advisory groups swap research ideas and methodologies and the point was made that “We have been impressed with NRW staff when we have seen their work” (pers comm. Senior Conservation Officer, IFCA). The WG are part of some discussions but are not on IFCAs Technical Advisory Group.

The consequences of this lack of cross-border coordination were apparent from South Wales IFG meetings where differences in the minimum landing size of rays between Wales and England were cited as factors that disadvantaged Welsh fishermen in areas such as the Bristol Channel²⁹¹. This is a legacy of deliberately conservative South Wales SFC bye-laws which appear to have been setting a pro-conservation example.

IFCAs also liaise with their enforcement teams sharing training, to cut costs. These include; improving methodologies to use marine statistics developed by the North East of England IFCA, which has developed partial stock assessment on shellfish and finfish. These findings have been shared with other IFCAs and they believe the method will be acceptable by CEFAS and ICES as a basis for providing accurate information on the state of stocks. IFCAs also share equipment and staff; for example, Southern IFCA officers have helped other IFCAs to use scanned sonar and cameras, and Eastern IFCA will help them on how to use other types of equipment. The respondent made the point that “...we would be pleased to help the WG if asked” (pers comm, Senior Management Officer, IFCA). Whilst there is some dialogue e.g. WG officers asking questions about IFCA methods there appears to be “a glass ceiling in the WG. Can these officers influence the top echelons of the WG Marine and Fisheries team”? (pers comm. Senior Conservation Officer, IFCA). Given the dearth of good environmental data on the state of fish stocks and the general marine environment, this is a missed opportunity to introduce measures that might be able to address this weakness.

Although the WG sit on the National Enforcement Group and Chief Officers Group²⁹², it only has a watching brief on IFCAs. More revealingly, the point was made that “...our IFCA has better co-management with the French than we do with Wales” (pers comm. Senior Management Officer IFCA).

²⁹¹ South Wales IFG minutes 27/02/2013 (Fol request)

²⁹² Specialist groups that involve IFCA representatives.

Clear rules of engagement for cross-border working are advocated to enable MCZ projects in English territorial and UK/offshore waters adjacent to England and Wales, such as the Irish Sea Conservation Zone Project, which has recommended a number of MCZs in the Welsh offshore region. This is imperative in seeking to create and deliver a truly coherent UK network that transcends political and administrative boundaries²⁹³. This does not appear to have progressed over this time period.

11.6 Enforcement

11.6.1 Enforcement activity

The current enforcement fleet is made up of the following vessels; however new replacement sea-going vessels are being built at the time of writing:

1. Cranogwen: large FPV 20m based in Milford Haven
2. Aegis: 17m FPV based in North Wales
3. Searider II: 6m rigid hulled inflatable boat (RIB); formerly SWSFC; peripatetic
4. Merlin: RIB carried aboard Cranogwen (able to operate in Milford Haven independently of Cranogwen; used to bolster patrol numbers; often used when staff numbers too low to enable Cranogwen to go to sea).
5. Iolo = small inflatable assigned to North Wales Fisheries Officers
6. Alpha = small inflatable assigned to North Wales Fisheries Officers

Poor and deteriorating enforcement was highlighted in many early IFGs meetings and one of the few issues raised by non-Government IFG members^{294,295} with fishermen pointing out that other proposed policies such as Fixed Administration Penalties were dependent on effective levels of enforcement²⁹⁶. However, complaints about the levels of enforcement continued to be a major item in virtually all IFG and many WMFAG minutes, with complaints over low levels of enforcement and over-emphasis on particular fisheries (scallops) to the detriment of other fisheries, the lack of enforcement in particular locations such as around the Llyn Peninsula and high levels of 'black landings'²⁹⁷.

Fishermen felt that their suggestions on improving enforcement were ignored. These included *"Members requesting that publication should be made on enforcement activity, and to publicise outcomes of successful prosecutions, with a preference for "naming and shaming"*²⁹⁸. Although this was noted and eventually responded to, access to material relating to enforcement activity material is patchy. Whilst some information has been provided on M&F webpages in the enforcement section, it also crops up on other pages such as Ministerial statements, including that of the Counsel General, making it difficult to find material, and these contrast with a much

²⁹³ WWF evidence to the Environment and Sustainability Committee, 21/09/2012

²⁹⁴ South Wales IFG minutes 21/09/2011 (Fol request)

²⁹⁵ North Wales IFG minutes 19/09/2011 (Fol request)

²⁹⁶ Mid-Wales IFG minutes 25/05/2011. (Fol request)

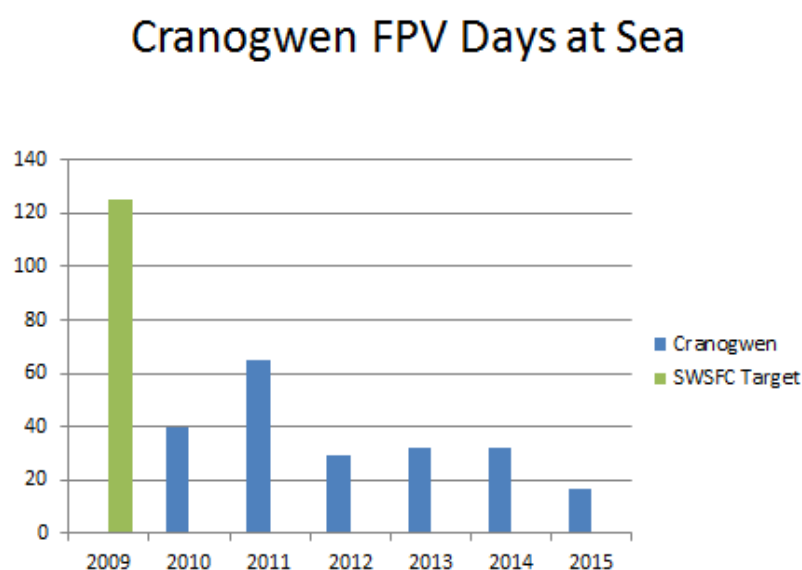
²⁹⁷ E.g. WMFAG minutes 26/03/2012 (Fol request)

²⁹⁸ South Wales IFG minutes 21/09/2011 (Fol request)

clearer method of access in IFCAs. Other issues which were commonly raised by IFG members but were not resolved, included poor response rates to illegal activities²⁹⁹ leading to frustration and lack of trust with enforcement officials^{300, 301, 302} and problems with methods of communicating offences in a timely manner³⁰³. Many fishermen were aware that poor enforcement was a threat to their long-term livelihoods and were providing material on offences, but the follow up was poor. This undermined trust in the M&FD regime³⁰⁴

Enforcement is an area that many respondents have commented on, mainly due to their perception that enforcement efforts have decreased since 2010. This apparent lack of enforcement was raised by commercial fishermen as early as 2011 with concerns that lobster catches were not being monitored to ensure compliance with minimum size; in addition, they were concerned at the fall in the number of fisheries officers since the new regime had taken over³⁰⁵. This has been attributed to a fall in the number or visibility of enforcement officers with the necessary skills and qualifications to man the vessels. *“In 2016, Cranogwen has been in port continuously for 120 days”* (pers comm. South Wales fisherman).

Figure 6: Days at Sea Cranogwen Compared to SWSFC Pre-2010 Target³⁰⁶
Source: WG Marine and Fisheries Division response to FoI (November 2016)



²⁹⁹ Mid-Wales IFG minutes 06/05/2014 (FoI request)

³⁰⁰ North Wales IFG minutes 15/10/2015 (FoI request)

³⁰¹ North Wales IFG minutes 04/02/2016 (FoI request)

³⁰² South Wales IFG minutes 11/02/2014 (FoI request)

³⁰³ North Wales IFG minutes 30/04/2015 (FoI request)

³⁰⁴ E.g. South Wales IFG minutes 11/02/2014 (FoI request)

³⁰⁵ Mid-Wales IFG minutes 20/09/2011 (FoI request).

³⁰⁶ Cranogwen is the former SWSFC FPV based in Milford Haven.

Whilst many factors influence the days spent at sea by FPVs, a target of 125 days per year was set for Cranogwen by the SWSFC and the actual number of days at sea were routinely reported to the SFC on a quarterly basis. The 23 days at sea that Cranogwen achieved in October, November and December 2008, during three months of the year when activities are expected to be relatively low due to bad weather, is the equivalent of 64% of the total average annual WG 2010-15 days at sea. And, of course, Crangowen covered only the SWSFC area, less than 50 per cent of the entire Welsh inshore region. This lack of enforcement has been commented on by many fishing respondents. Complicating factors when comparing the pre-and post-2010 sailing figures include: variability that may be caused by weather conditions; repairs; availability of crew members and the introduction of new vessel tracking technology for scallop fishing.

In 2015, The Counsel General observed that *“Over the past five years, around 15 investigations per year have been taken with approximately 30 per cent of these leading to proceedings through the courts”*³⁰⁷. The number of prosecutions in the post-2010 period appears to show a significant decrease. Comparison of the values in Figure 7 shows that the average number of prosecutions pursued by SWSFC in its last six years was just over ten per annum for just the area between Cardiff and Cemaes Head, whilst the post-2010 average is just over eight per annum for the whole of Wales, including the offshore area beyond the six-mile limit which was beyond the jurisdiction of the two former SFCs. The WG M&FD were unable to provide a breakdown of the location of incidents prosecuted which appears to be a loss of detail that would be vital in fisheries management³⁰⁸.

The level of successful enforcement does therefore appear to have fallen over this period. In particular, the number of prosecutions for shellfish gatherings, mainly of cockles, but also of mussels, appears to have almost collapsed, with only two incidents specifically identifying this as a cause of a prosecution in the post-2010 period. In contrast, SWSFC prosecutions were dominated by prosecutions in this sector in the 2004-09 periods, with approximately 75 per cent in the sector, especially in the Burry Inlet and Three Rivers cockle fisheries. This decline may be due to the removal of a dedicated officer in this region which has long been a target of mainly locally derived poaching at a variety of scales. This loss of local knowledge might be a contributing factor in a decline in successful prosecutions, although the continued high mortality in these cockle beds might also be a cause, as local poachers decide that returns are too low. However, in answer to concerns by South Wales IFG members concerned at the lack of enforcement in cockle beds, the response was that *“officers had been inspecting larger vessels to ensure compliance with EU regulations...This takes up a vast amount of officers’ time.”*³⁰⁹ This indicates a lack of resources allocated for enforcement and vindicates those who had pointed out that extending the Fisheries Unit’s remit beyond six miles would inevitably diminish enforcement activity within the six-mile zone.

³⁰⁷ Mick Antoniw AM, Counsel General, 02/08/2016 Written Statement - Successful prosecutions of fishing vessels for scallop fishing offences, available at: <http://gov.wales/about/cabinet/cabinetstatements/2016-new/prosecutionsfishingvesselsforscallop/?lang=en> accessed 01/02/2017

³⁰⁸ It is inconceivable that the position of offences is unknown, not least because many are likely to be on the grounds of being inside a closed or similar area.

³⁰⁹ South Wales IFG minutes 22/10/2015 (Fol request)

Figure 7 Prosecutions brought by South Wales Sea Fisheries Committee and WG 2004-2015³¹⁰

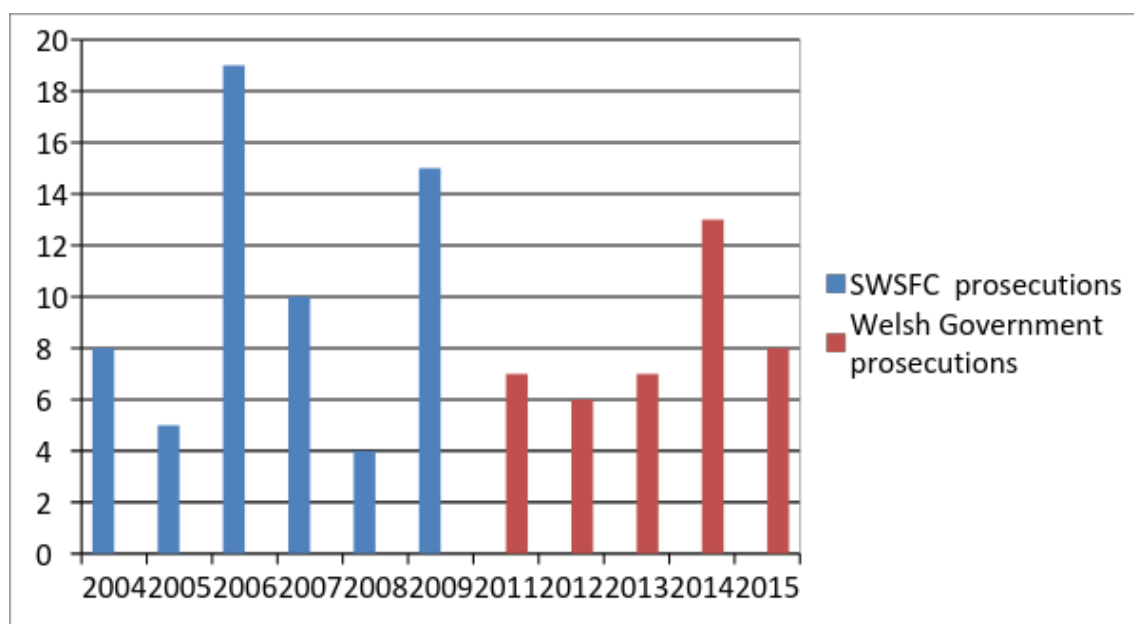
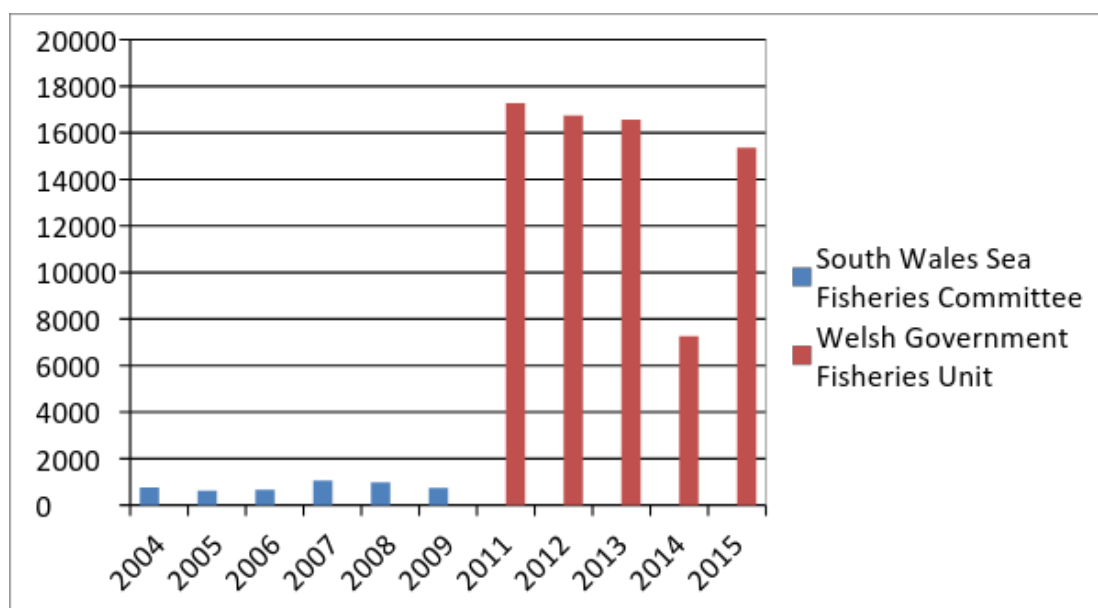


Figure 8: Average fine per successful prosecution 2004-2015 (£'s)³¹¹



³¹⁰ Sources SWSFC Archives available at: <http://www.webarchive.org.uk/wayback/archive/20111004153041/http://www.swsfc.org.uk/home.htm> and WG M&FD in response to FOI request.

³¹¹ Sources SWSFC Archives available at: <http://www.webarchive.org.uk/wayback/archive/20111004153041/http://www.swsfc.org.uk/home.htm> and WG M&FD in response to FOI request

Since 2010 the level of fines has increased substantially. There is a striking difference between the two periods, with penalties per successful prosecution (including costs in the case of the SWSFC) averaging £795 before 2010, but rising to £15,370 in the post 2010 period. However, there are several important reasons for the differences.

The maximum fines possible under the 1966 Sea Fisheries Regulation Act during the SWSFC days were just £5000; section 299 of the MCAA increased that maximum to £50,000. The MCAA also made offences more easily detected and prosecuted; for example, the former 1966 wording “fish for or take”, a difficult concept for fisheries enforcement to prove, was replaced by the more realistic requirement in MCAA 2009 for the fisheries regulators to demonstrate illegal “carriage or possession”³¹².

The fines also reflect the difference in offences prosecuted. Of the seven fines over £20,000, all except one were for scalloping offences³¹³, reflecting the significantly greater scale and value of the catches. It also reflects the value of VMS data which enables improved monitoring of ten metre and over boats, many of which are engaged in the scallop sector, which was unavailable to the SWSFC.

It is also apparent that fishery offences are now better recognised by courts. For example, the court’s ability to impose substantially higher fines compared to the SFC era is demonstrated by the fact that the only other fine over £20,000, which was imposed in 2010, was for illegal cockle gathering.

A further concern regarding enforcement is the lack of information freely available to the general public and the industry in terms of activity and fines. Such information is vital in the management of communal resources as it reduces uncertainty amongst users that illegal fishermen are depriving them of the shared resource, or that if they attempt to do so, they will be caught and punished. Where such uncertainty exists, well-run, communally managed resources begin to exhibit features which are more akin to open access resources, which may trigger a tragedy of the commons³¹⁴ as those who limit their fishing effort for the common good see their efforts only benefitting those who subsequently deprive them of their fair share of their potential income, and thus they in turn begin to expand their catch before the resource disappears entirely.

The lack of enforcement had been raised in the early post-2010 regime period by IFG fishing members.³¹⁵ By May 2014, although fishermen believed that reporting transgressions in fisheries legislation was taking too long via the IFG and WMFAG route, they preferred this to reporting directly to the M&FD because they felt that in too many cases, their reports went unrecorded with no action taken and in the same meeting worries were expressed that IFGs might fail due to a “...*lack of confidence* (among members) *and coordination* (between groups)”³¹⁶. Others expressed a lack of confidence in specific, though unspecified, Fisheries Officers (pers comm. Former IFG member).

³¹² <http://www.ne-ifca.gov.uk/legislation-and-byelaws/penalties/>

³¹³ IFG members commented regularly on the over-emphasis on scallop prosecutions to the detriment of other fisheries. E.g. North Wales IFG minutes 30/04/2015 (Fol request)

³¹⁴ Hardin, G. (1968) Science, Vol. 162, Issue 3859, pp. 1243-1248

³¹⁵ Mid-Wales IFG minutes 20/09/2011 (Fol request)

³¹⁶ Mid-Wales IFG minutes 06/05/2014 (Fol request)

The lack of effective enforcement has been recognised within the National Assembly. *“I think there is an urgency about all this, isn’t there? Because in the meantime, people are actively plundering our resources, and there’s a lack of clarity about whether we have the powers to take enforcement action either to close areas that are under threat ecologically of extinction or, indeed, to effectively pursue the criminals”*³¹⁷. However, the fact that this was still identified as a major issue five years after the new regime commenced operations points to an inability to address a fundamentally important fisheries and conservation management issue.

Another issue that is raised by ex-fisheries officers is the lack of flexibility in the post-2010 regime. Ministerial decision-making takes too long to respond to short-term ecological changes that require flexible management decisions based upon detailed local scientific and socio-economic/cultural knowledge. If this does not happen, then resources can be “wasted”³¹⁸ which has happened in the cockle fishery; *“Reaction time is too cumbersome. The scale at which decisions are made is inappropriate for the ecological and economic realities facing the cockle industry”* (pers comm. Ex-Fisheries Officer).

This flexibility is apparent in many of the former SWSFC bye-laws such as Bye-laws 16 and 17, relating to the Burry Inlet cockle fishery and Bye-law 41 which applies to boat fishing (catch returns) permit. This flexibility does not appear to have been taken on board by the WG and fisheries officers have made the point that this has made it difficult for some fishermen to obtain permits to fish legally because of the slow response of the M&FD.

Other issues raised include the separation of science officers into a different department than enforcement so sharing of information is less apparent. SWSFC employed a dedicated science officer who worked closely with the enforcement team which enabled them to switch resources quickly to address issues raised by both sides. Finally, because of a loss of a dedicated enforcement officer, in the Burry Inlet, Three Rivers area, it is claimed that the insights into the local social and cultural factors that influenced poaching activity, and the ability to recognise known poachers, has also been reduced (pers comm. Former Fisheries Officer).

11.6.2 WG responses to criticisms regarding enforcement 2010-2016

The Fisheries Management Board was designed to partly address some of the issues raised by IFGs and *“...would focus on delivery of key areas of fisheries work whilst IFGs/WMFAGs would provide the challenges”*³¹⁹. However, with the indefinite postponement of IFGs in the autumn of 2016, this system had apparently been abandoned. Within two years of the new regime taking control of fisheries management WMFAG members agreed that *“...there has been a significant deterioration in levels of enforcement since the merger of the Sea Fisheries Committees”*³²⁰, but enforcement was still highlighted as a major issue in all IFGs as late as 2016.

³¹⁷ Jenny Rathbone AM taking evidence for the Environment and Sustainability Committee, 26/02/2015, p30<http://senedd.assembly.wales/documents/s37267/26%20February%202015.pdf> Accessed 13/12/2106

³¹⁸ Waste of fisheries “resources” is an anthropocentric construct. Ecologically the biological energy of unexploited marine “resources” is simply recycled.

³¹⁹ South Wales IFG minutes 16/07/2015 (Fol request)

³²⁰ WMFAG minutes 26/03/2012 (Fol request)

The M&FD did eventually produce a Marine and Fisheries Operations report to WMFAG³²¹ but despite the detail on FPV activities, enforcement activities and specific reports regarding landings of species, this appears to have been too little too late and many fishermen and IFG representatives appear never to have seen the information.³²² The result has been that enforcement and the ability to explain activities to the fishing community remained an Achilles heel of the M&FD almost six years after WG had taken over these responsibilities.

11.7 Achievement of communal resource management

Welsh inshore fishing falls between the extremes of unmanaged, open access exploitation of communal resources - where no controls exist over numbers accessing the resource, and where no attempt is made to monitor the resource or place restrictions on whom, when and how it should be used - and a comprehensively managed system where exploitation of all the different target species and the environmental and ecosystem effects of their exploitation are rigorously and holistically regulated in an integrated manner.

In some circumstances licenses restrict access and regulations exist to restrict the size of individual species caught, to restrict the timing of fishing and/or the types of fishing gear that may be used. However, in practice, these generalities are not clear cut; fishing vessel licences do not restrict spatial access and only licenses for “pressure stocks” (stocks with quota) are genuinely restricted. *“The whole issue of access is the subject of great agonising by Welsh fishing interests in respect of the reopening of more of Cardigan Bay to scallop dredging. The locals want to restrict access to Welsh vessels but can’t, so they are tying themselves in knots trying to identify work-arounds that would make it uneconomic for vessels from England or Scotland for example to come and dredge the area.”* (pers comm. retired conservation officer).

Set against the significant historical overfishing of finfish in UK waters, including the Irish and Celtic Seas, further species have, at times in some locations, shown signs of over-exploitation in recent decades which have resulted in the further degradation of fisheries resources; a 2000 study suggests that a succession of fisheries around Wales have experienced significant periods of over-fishing³²³. The current state of bass fisheries is one contemporary example (pers comm. former fisheries officer) and other examples of over-exploitation include: *“Crawfish that were fished to commercial extinction by the 1970-80s; scallop catches boomed and bust in Cardigan Bay the early 1980s and took almost 30 years to recover; whelk catches also boomed and bust in Carmarthen Bay in the 1990s and are now being hammered offshore because the closer inshore populations are so depleted; oysters were wiped out as a commercial species in the first half of the last century. Finfish were all massively overexploited in the Irish Sea by the middle of the 20th century. Unfortunately, all the relevant fisheries statistics relate to sea areas rather than Wales, so it is impossible identify a “Welsh resource”³²⁴. Many finfish species populations in the Irish and*

³²¹ WMFAG minutes 29/02/2016 (FoI request)

³²² The M&F operational report is not recorded in any IFG minutes

³²³ Thomas, D. (undated). Marine fisheries and wildlife In Pembrokeshire 2000: sustainability & biodiversity. International Centre for Protected Landscapes, University of Wales, Aberystwyth.

³²⁴ Though that would also be difficult due to the migratory nature of many species.

Celtic Sea remain well below Maximum Sustainable Yield; the common skate remains commercially extinct” (pers comm Retired Conservation officer).

These adverse trends appear to be continuing. *“When the landing figures for species such as crab and lobster are considered against the activity of the onshore processing sector, we would take the view that the sector is operating close to limits of primary product availability and this is highlighted by the inflows of product from other areas of the UK and non-UK product for processing”* ³²⁵.

Competition for space and limited resources result in many species remaining subject to the inevitability of over-exploitation and destruction because of the inability of the users of the resource to resist short-term profits over long-term sustainability. The Tragedy of the Commons should perhaps therefore be re-defined in this case as a Tragedy of Open Access or of poorly managed common pool resources.

The dangers of not involving fishermen in the co-management of their fisheries are well documented ³²⁶ and the need for a nested or tiered system of management is also important.

The IFGs may be considered to have been an attempt to achieve this principle in Wales. However, the lack of proper participation and effective power resulted in an impotent level of management, first recognised by many members of IFGs and finally the M&FD. Some of these principles are applicable to some resources in the Welsh inshore fisheries system. For example, inter-tidal resources are clearly demarcated by area, and the users and official enforcement agencies have exclusion mechanisms to deter unlicensed users ³²⁷ though they are expensive, difficult to enforce and have resulted in violent conflict ³²⁸.

The other principles do not however appear to exist in the current management structure. The post-2010 management regime in fact seems to move away from Ostrom’s Principles as it has centralised many of the powers which are now more remote from the resource users. The apparent demise of IFGs is one such centralising process. There is little if any attempt to recruit fishermen to monitor the resources and where this has been attempted, is often met by a lack of response from the fishermen who are suspicious that the information will be used to restrict fishing activity ³²⁹. However, IFG minutes also demonstrate the frequent occasions that fishermen were frustrated that reporting of fishing offences were not followed up by M&FD enforcement of the laws. The more remote structures and the demise of IFGs makes it less likely that local

³²⁵ http://www.seafish.org/media/1635910/welsh_seafood_supply_chain.pdf p58 accessed 3/08/2016

³²⁶ Schreiber, D.K. (2001) Co-management without involvement: the plight of fishing communities, *Fish and Fisheries*, Volume 2, Issue 4 pp 376–384; Himes, A.H. (2003) Small-Scale Sicilian Fisheries: Opinions of Artisanal Fishers and Sociocultural Effects in Two MPA Case Studies, *Coastal Management*, Volume 31, Issue 4, pp389-408

³²⁷ e.g. Several and Regulating Orders

³²⁸ Cockle gathering (West Wales), House of Commons debate 31 October 1994, <http://hansard.millbanksystems.com/commons/1994/oct/31/cockle-gathering-west-wales>; Cockle wars being fought on beaches; <http://www.independent.co.uk/news/cockle-wars-being-fought-on-beaches-1086235.html>; Evil gangmasters who rule the cockle slave trade by fear, <https://www.theguardian.com/uk/2004/feb/08/immigration.china>

³²⁹ The SWSFC required catch returns as a permit condition, hence their good statistics on landings (albeit they were anonymised so it was impossible to identify the spatial distribution of catches).

conflicts will be easily reconciled and although there are some indications that the WFA wish to play a greater role locally in self-managing resources (*"The WFA is promoting the adoption of an ecosystem based approach with a strong regional co-management structure where locally relevant solutions are found for marine management issues"* ³³⁰), this is not a model that has been widely adopted or promoted by the WG. If such an approach were to be adopted in some areas, then Ostrom's Principles would provide a theoretical basis on which to base any structure and powers, whilst Woolmer's 2009 study of partnerships in fisheries management provides empirical evidence for such an approach ³³¹. However, the fishing industry and M&FD would also need to provide a stronger voice for conservation groups and all other stakeholders, and all need to be underpinned by better evidence of the state of the marine environment - and of course, the WG should now be adopting the "five ways of working" under the WBFGA. ³³²

Other factors which undermine the legitimacy of fishermen's claim to become leaders in wider fisheries and marine management were pointed out in critique of WFA's *"Striking the Balance"* written to the then Minister ³³³, including that it contained unsubstantiated assertions, inconsistent arguments, proposals predicated on beliefs not evidence, was both misleading and an attempt to reinvent the wheel and failed to recognise that the marine environment is more than a resource for fishermen.

Other differences between Ostrom's Principles and the WG's approach to fisheries management include a lack of effective communication to the fishing community, either from the M&FD, the IFGs or WMFAG, which in turn creates more uncertainty amongst users and reduces trust within user groups. Given the nature of the Welsh inshore fishing industry, with many small, often quite discreet fishing grounds shared by a relatively small number of, in the main, easily recognisable users, the decision to centralize management seems even more curious given the evidence that exists for the benefits of smaller scale nested management systems. Examples of these were identified shortly before the change in management took place, but again the lessons from elsewhere appear to have been ignored. These points were emphasised by a former fisheries officer who had transferred from an SFC to the new regime. *"The biggest change was the loss of contact with fishermen whether informally or through the local committees. We used to be able to discuss issues and potential plans in a mutually respectful informal way and suggestions could be worked through. That stopped after 2010 as everything had to be written down and had to go via the Minister"* (pers comm. Former fisheries officer). These often-unrecorded meetings enabled enforcement officers to keep their finger on the pulse of the local fishing community. It also enabled SFC staff *"to talk fishermen around in an unpressurised environment"*. In contrast, *"...the IFGs prevented such informal exploratory dialogue because I never felt I had the authority to raise issues with fishermen as the Minister might not agree"* (pers comm. Former fisheries officer). These informal meetings and subsequent discussions were also important in acquiring information on the scale of non-commercial fishing activities and *"...we also spent time checking*

³³⁰ Welsh Fishermen's Association, available at <https://welshfishermensassociation.wordpress.com/news-and-updates/> Accessed 16/12/2016

³³¹ Woolmer, A. (2009) Partnership approaches to fisheries management: lessons for Wales, WWF Cymru

³³² See Table 2.

³³³ Bullimore, B. letter to John Griffiths, Minister for Environment and Sustainable Development. October 2012

freezers in restaurants, hotels and bait shops with the information supplied from such discussions" (pers comm. Former fisheries officer).

11.8 Cardigan Bay scallop fishery case study

On 31 October 2016 the cabinet Secretary for Environmental and Rural Affairs announced her decision to "...proceed with preparation of new legislation to introduce a flexible permit scheme" for scallop fishery within Cardigan Bay Special Area of Conservation (SAC), following what she described as "...extensive consultation" on plans regarding proposals on new management measures for the scallop fishery.

Scallop dredging had been prohibited from all except a small area of the SAC in 2010 following complaints to the EU. The WG's consultation process, and its decision to re-open recently closed areas to enable expansion of the scallop fishery in the Bay were strongly criticised and opposed³³⁴. The wording of the consultation document was highly criticised for being ambiguous³³⁵ whilst the science was questioned because of what critics considered to be an inappropriate baseline³³⁶, although it could be argued that the science fitted the questions asked which, although concerned with the impact of scallop dredging on the marine environment, had not specified the impact needed to be assessed on an undisturbed (by human activity) marine environment.

The consultation³³⁷ clearly stated that: *"The Welsh Government now aims to establish a viable and sustainable scallop fishery within the currently closed area within Cardigan Bay SAC. Our intention is to introduce a flexible new management system which should ensure a sustainable supply of scallops into the future whilst safeguarding important marine species and habitats."*

It is implicit that a decision had already been made to expand the fishery (with the consultation explicitly confined to developing a new management system) and that the WG was not open to hearing arguments against expansion or closure of the current restricted fishery. Instead, the consultation questions moved directly to how an expanded fishery should be managed, rather than the pros and cons of the fishery itself. The proposals themselves were vague and lacked substance, providing scant information on the extent proposed new fishery and the management measures. For example,

³³⁴ For example: <https://www.theguardian.com/environment/georgemonbiot/2015/nov/09/allowing-scallop-dredging-in-strictly-protected-dolphin-reserves-is-madness> Accessed 24/11/2016; <http://www.wmc.org.uk/2016/01/consultation-on-scallop-dredging-in-cardigan-bay/>

³³⁵ <https://www.theguardian.com/environment/2015/nov/26/welsh-dolphin-reserve-consultation-that-switched-no-responses-to-yes> Accessed 24/11/2016; This criticism was acknowledged as justifiable by the Minister of Natural Resources.

³³⁶ For example, evidence from Dr E Sheehan to the National Assembly Climate Change, Environment & Rural Affairs Committee inquiry into Wales MPA management: <http://senedd.assembly.wales/documents/s61207/16%20March%202017.pdf> in which the scientific lead of the scientific studies effectively acknowledged that the baseline was not robust: "we'd all like to have access to control areas, where there were no human activities, against which we could compare the response of the system. You don't always have ... the perfect system. ... Cardigan bay, ... prior to its designation as a special area of conservation, was subject to a variety of forms of fishing."

³³⁷ <https://consultations.gov.wales/consultations/proposed-new-management-measures-scallop-fishery-cardigan-bay>

- Extent: What is the spatial area of the proposed fishery? How much of the SAC will be affected? There is no information on, nor maps detailing, the affected areas of seabed.
- Monitoring and enforcement: How will the impacts of the proposed new fishery be monitored? How will the proposed new fishery be policed? By whom? What are the anticipated costs to the public purse?

The official response of NRW to the consultation notes “...*confusion around the geographic limits of the proposed new management regime as the consultation mentions Cardigan Bay, but the response form indicates the Cardigan Bay Special Area of Conservation*”, and that if it were in the 3-12 nautical mile SAC area, then a Habitats Regulations Assessment (HRA) ³³⁸ would be required under domestic and European law; the purpose of the HRA being to determine whether the proposal (i.e. the expansion of the fishery) is likely to have an “...*adverse effect on the integrity*” of the SAC in light of the conservation objectives for that site. The law is clear on this point: the precautionary principle applies, and where there is any reasonable scientific doubt the proposal must not be implemented ³³⁹.

Although the consultation refers to studies carried out by Bangor University in conjunction with the Welsh Fishermen’s Association ³⁴⁰, there is nothing to indicate that the WG took account of the considerable peer-reviewed literature available on scallop-dredge fisheries, which provides much evidence as to the negative impacts of dredging ³⁴¹. Consequently, doubt does indeed remain as to whether an expansion of scallop dredging is likely to have an adverse on the integrity of the SAC. Ironically, whilst one of the independent reviewers of the key scientific assessment of likely effects refers to issues concerning difficulties of understanding the true baseline (pre-scallop dredging state of the marine environment) in the SAC, he then took no further account of the crucial shortcoming in the rest of his review ³⁴².

Whilst the Bangor University reports implied that the baseline was adequate since dredging had been excluded from its experimental areas for about four years (disregarding the dredge tracks detected during the studies and the WG's prosecutions of vessels for illegally dredging in closed areas), this was strongly contested as the baseline data only extended back to 2009 and it was argued that recovery to a pre-dredged environment was likely to take much longer. Little or no account appears to have been taken of long-term research and surveillance that shows the potentially very long time-lag for recovery after cessation of dredging, and that the abundance of

³³⁸ See section 4.1.1

³³⁹ ECJ Case C-127/02 Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij)

³⁴⁰ Lambert, G. I., Murray, L.G., Hiddink J. G., Hinz H., Salomonsen H, & Kaiser, M.J. (2015). Impact of scallop dredging on benthic communities and habitat features in the Cardigan Bay Special Area of Conservation. Part I –Impact on infaunal invertebrates. Fisheries & Conservation report No. 59, Bangor University

³⁴¹ For example: Hinz, H (2011) Effects of scallop dredging on temperate reef fauna, Marine ecology. Progress series, Vol. 432, pp 91-102; Sheehan, E. V. et al (2013) Recovery of a Temperate Reef Assemblage in a Marine Protected Area following the Exclusion of Towed Demersal Fishing, PLoS One, Vol 8 (12), Page: e83883. doi: 10.1371/journal.pone.0083883,

³⁴² Tuck, I. (undated) Scallop Dredging of Cardigan Bay – review of scientific study available at: <http://gov.wales/docs/drah/publications/161019-peer-review-dr-ian-tuck-university-of-auckland-scallop-dredging-of-cardigan-bay-en.pdf> accessed 31/01/2017

both juvenile and adult scallops is greater within the more structurally complex and stable habitats that have been shown to develop, albeit slowly, within marine reserves protected from dredging, such as that carried out in the Lamlash Bay, Isle of Arran, the Isle of Man and Skomer MCZ, SW Wales ³⁴³.

The consultation did not indicate any timescale for conducting an HRA, and a Freedom of Information request in April 2017 indicated that there had not been any correspondence between the WG and NRW on the issue ³⁴⁴. However, the WG has now indicated that it intends to introduce a flexible permit scheme for scallop dredging within the Cardigan Bay Special Area of Conservation which involves opening up a small area of the Special Area of Conservation each year on rotational basis and that “...in due course the measures will be subject to *Habitats Regulations Assessment before being introduced and before the opening of the fishery*”, ³⁴⁵ which is anticipated to be in November 2017. The WG also proposes to establish a “Management Advisory Board” to advise it on permit conditions.

The WG’s leaning towards economic growth might be interpreted as the driver behind its decision to restart scallop dredging in the Cardigan Bay SAC. Its argument that the decision is based on sound scientific evidence that has been independently verified, is at least questionable given that this claim remains contested.

The decision in favour of expanding scallop dredging in the Cardigan Bay SAC suggests that where tension exists between environmental protection and economic development, the WG favours the latter, though they argue that their ‘independently verified’ scientific evidence justifies this decision. However, it is argued that this approach fails to adopt a precautionary approach which undermines the potential of SACs to conserve key habitats and species ³⁴⁶, and it has been queried whether the low level of protection found in many SACs, such as Cardigan Bay will prove to be effective ³⁴⁷. That such a pro-fishing decision was taken in an area that is supposedly subject to the highest level of protection, calls into question the supposed balanced approach being adopted by the WG towards its marine environment.

Further, the change to the tenor of NRW’s statutory duties, shifting away from “conservation” towards “sustainable management of natural resources” is likely to have consequences for the

³⁴³ Howarth et al (2011) Complex habitat boosts scallop recruitment in a fully protected marine reserve, Marine Biology, Issue 8, pp 1767-1780; Skomer MCZ Annual Report 2016, <https://naturalresources.wales/media/681552/2016-smcz-annual-report.pdf> ; Beukers-Stewart, Bryce Donald orcid.org/0000-0001-5103-5041 and Beukers-Stewart, Joanne (2009) Principles for management of inshore scallop fisheries around the United Kingdom. Research Report. Marine Ecosystem Management Report. University of York. http://eprints.whiterose.ac.uk/105473/1/Beukers_Stewart_Beukers_Stewart_2009_Scallop_Fisheries_Management.pdf

³⁴⁴ Letter from Marine & Fisheries Division Welsh Government to Kerry Lewis, dated 11 April 2017

³⁴⁵ The Cabinet Secretary for Environment and Rural Affairs: Paper for the National Assembly for Wales Climate Change, Environment and Rural Affairs Committee’s Inquiry into the Management of Marine Protected Areas in Wales, June 2017

³⁴⁶ Simmonds et al (2013) Assessing the Cardigan Bay bottlenose dolphin SACs, *ECOS* 34(3/4), pp46-55 available at: <http://www.banc.org.uk/wp-content/uploads/2015/03/ECOS-34-3-46-Assessing-the-Cardigan-Bay-bottlenose-dolphin-SACs.pdf> Accessed 14/02/2017

³⁴⁷ Hoyt, E. 2011. Marine Protected Areas for Whales, Dolphins and Porpoises: A world handbook for cetacean habitat conservation and planning. Earthscan/Taylor & Francis, London and New York.

balance between environmental, economic, social and cultural aims of sustainable management objectives. Very few management measures have been implemented within Welsh MPAs and exceptions such as the Scallop Dredging Order (2010), which is now being undermined in Cardigan Bay SAC, reinforce the impression that, in practice, most Welsh MPAs are “paper parks” with very little protection.

It is almost impossible to square the decision to expand the fishery, in a manner which deliberately and strategically exposes different parts of the seabed in the SAC to the impacts of dredging, with NAW's and the WG's commitment to the principles of sustainable management of natural resources,³⁴⁸ fulfilment of the resilient Wales goal³⁴⁹ and the needs of future generations³⁵⁰, and the application of the precautionary approach³⁵¹.

³⁴⁸ Article 4 Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903), as amended

³⁴⁹ A resilient Wales: A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change), section 4, Well-being of Future Generations (Wales) Act 2015.

³⁵⁰ Section 5(1) WBFGA

³⁵¹ Principle 15 Rio Declaration: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

12. CONCLUSIONS

The WG was overconfident in taking inshore fisheries management in-house and assigning responsibility for it and other important marine functions to a relatively small, newly established department, particularly taking account of its limited range and depth of relevant experience exacerbated by the marginalisation of former SFC staff.

The scope of the M&FD's role is to deliver across the full range of the WG's commitments to the shared UK vision of "clean, healthy, safe, productive and biologically diverse oceans and seas", a vision routinely reiterated by Welsh Ministers whenever their actions are questioned (most recently in the response to the Climate Change, Environment and Rural Affairs Committee report of its inquiry into the Welsh Government's approach to Marine Protected Area management ³⁵²). Nevertheless, their main focus has been on fisheries management, and particularly for delivering short-term economic, rather than genuinely long-term environmental benefits or sustainability. Comparatively little resource has been directed toward the biodiversity element and there is conspicuously little evidence to demonstrate meaningful action to deliver marine biodiversity and environmental resilience. Despite the claims for the Cardigan Bay scallop fishery management proposals, initiatives aspiring to improve fisheries sustainability have focussed on fisheries resources rather than wider environmental sustainability.

The evidence from primary and secondary sources suggests that the WG's pre-2010 optimism that it would be able to take over effective control of Welsh inshore fisheries was misplaced. Although the decision was contested, there is no doubt that in its early phase, there was a great deal of expectation, optimism and goodwill amongst members of the fishing industry and non-government stakeholders, some of whom were being given an opportunity to participate in management discussions for the first time ³⁵³. However, even at this early stage, independent evidence suggested that the WG had underestimated the complexity of the tasks it had taken on board and was attempting to achieve them with too few resources, although, more importantly, poor management meant that it was not using the resources which it had inherited from the SFCs in a fully rational manner. Evidence from various Environment and Sustainability Committee hearings and investigations suggests that the political leadership has downplayed this failing, although whether this was deliberate, or they had been misled by officials, is not always clear, while frequent changes in Ministers also slowed up decision making.

Whilst the state of commercially exploited species has clearly been a frequent concern within IFGs, and also the wider marine NGO community, there is little evidence that the marine environment has been considered more holistically as required by the MSFD and other legal drivers, both national and international.

One of the most important failures of the WGs wider marine strategy is the glacially slow rate of progress on improving the management of the Welsh marine environment. Crucially, management of inshore fisheries to meet nature conservation and biodiversity targets and

³⁵² Turning the Tide? Report of the inquiry into the Welsh Government's approach to Marine Protected Area management' (2017). National Assembly for Wales, Climate Change, Environment and Rural Affairs Committee, available at: <http://www.assembly.wales/laid%20documents/cr-ld11159/cr-ld11159-e.pdf>; <http://www.assembly.wales/laid%20documents/gen-ld11208/gen-ld11208-e.pdf>

³⁵³ This is evident from all three IFG group minutes.

obligations has been inadequate. A fundamentally important factor is that the WG has chosen not to exercise the powers it inherited to manage its only MCZ and the EMS after MCAA, whilst the NAW has failed to exercise the legislative power it acquired in 2011 to impose the duty on the executive to manage MPAs through new Welsh legislation. By so doing, this failure helps promote short-term economic gain for long-term sustainable management and undermines the future delivery of two of the WG's key environmental legislative achievements, The Environment of Wales Act (2016) and the Well-being of Future Generations Act (2015). It also undermines its current obligations to achieve Good Environmental Status for the marine environment as set out in the MFSD, to be achieved by 2020. Incidentally, the WG has failed to acknowledge that this in turn undermines its ambition for a more productive Welsh commercial fishery.

The WG has consistently avoided its responsibilities under MCAA and whilst Wales has the largest percentage of designated MPAs within the UK inshore region, the vast majority of them are still little more than “paper parks”. It has failed to use the powers it acquired after taking over control of the Welsh inshore area and has ducked its responsibilities, particularly to EMSs, by claiming that as it is not a relevant authority it therefore does not need to, or is not permitted to, engage with relevant authorities in the development of integrated management of Wales' designated EMSs. As these EMSs represent over 50 per cent of the Welsh inshore sector, this means that the fisheries manager, responsible for managing the most damaging human activity in most of the area within these sites, is not represented, leaving all other management agencies frustrated with their inability to deliver the integrated management that is expected of them. Unless the WG takes the initiative to regulate fishing activities more carefully, little meaningful progress toward achieving “favourable conservation status” (section 4.1.1) or the government’s vision for “clean, healthy, safe, productive and biologically diverse oceans and seas” (section 4.2), will be achieved in Wales’ EMSs.

What will compel the WG to become more proactive in the management of the marine environment is for NAW to use its legislative competence, acquired in 2011, to convert the powers already acquired by the WG after MCAA into a duty to use them. This overcomes the objection set out in 2009 by the then Minister that it was inappropriate for the UK Government to impose duties on the WG with respect to devolved matters.

M&FD has been unable to significantly improve its understanding of the state of the marine environment, fisheries management and the key species on which Welsh fishermen rely, despite the fact that they inherited considerable expertise from the two SFCs. Many of the former SFC officers appear to have been marginalised within the new structure and their expertise was not fully recognised or utilised, to the detriment of the effectiveness of the new management regime. This is a fundamental weakness and undermines the goal of achieving a sustainable inshore fishing industry. It also undermines the goals set out in the MSFD, MCAA, EWA, and the WBFGA and calls into question whether the WG has the political will or ability to deliver on what it claims to be world-leading environmental legislation.

NRW’s SoNaRR (2016) contains little detail on the marine environment, which reinforces the view that little progress has been made with respect to improving knowledge of the Welsh inshore marine environment since 2010. This may undoubtedly be due to resource constraints, both within the M&FD and NRW, but may also reflect a relatively low priority accorded to the marine

environment. However, although the M&FD have been optimistic about the potential role of fishermen helping to fill gaps by contributing to environmental data collection, whilst some fishermen have co-operated with studies such as the FishMap Mon Project and the Bangor University scallop project, these are relatively rare and focussed on fisheries. This sparsity of information has made it difficult to assess the condition of Wales', on paper, impressive range of MPAs and therefore to produce rational management plans to enable them to recover from what is, in many cases, a degraded state.

The WG has, therefore, been unable – or unwilling - to articulate a vision that the current degraded state of the marine environment would require more radical management solutions that would ensure the long-term health of the industry over more short-term considerations. Part of the reason may be the inherent conflict of interests within M&FD. They have duties to both regulate and to support development of fisheries – just about every Ministerial statement on fisheries stresses the Minister's wish to see fisheries growth and expansion. It is uncomfortable to admit knowing about the declines in stocks and other inconveniences, if being pressed to increase fishing effort and catches. Paradoxically, given the frequent acknowledgement by fishing industry representatives of over-fishing, many fishermen seem to be wary of studies that provide evidence of overexploitation or inappropriate management, presumably fearing, ironically, that the information may be used against their fishing interests, despite the WG channelling significant funding to Bangor University for a scallop dredging study which provided justification for reopening parts of Cardigan Bay SAC to scallop dredging³⁵⁴.

The M&FD appear to have been unable to address the issues raised by fishing representatives who were expressing concerns about over-fishing, lack of enforcement and the subsequent threats to their livelihood. As early as 2011 fishermen were reporting that enforcement activity appeared to be falling, but effective responses by the WG do not appear to have been made. The introduction of a VMS partly offset this in one sector, but it applied to relatively few vessels. Specific issues relating to landings of undersized crustaceans, illegal bass fishing and illegal cockle fishing have persisted.

The sluggishness with which progress has been made on enforcement may be related to the slow pace at which legislation has been upgraded, with only one major change relating to crustaceans almost six years after the WG took over control of inshore fisheries.

The slow rate of progress has been seen throughout a range of issues from the failure to fully resolve the issue of historic or grandfather fishing rights, to the impasse on the introduction of highly protected MCZ's, the former due to a misunderstanding of the legal complexities, whilst the latter is due to a failure of leadership and willingness to explain their purpose and value in the face of hostility from the commercial fishing sector and others. This is ironic given the frequent calls for better enforcement to protect commercial stocks and the realisation by many fishermen that the economics of the industry are moving against them as key stocks such as bass and whelks continue to decline.

³⁵⁴ Including to non-indigenous vessels; in May 2016 eight of the 14 scallop licences were owned by non-Welsh FPOs although their vessels are based in Welsh ports.
<https://www.gov.uk/government/collections/uk-vessel-lists>

The preceding factors suggest that there has been a failure by the WG and its M&FD to engage effectively with key stakeholders in the Welsh inshore sector other than small groups that represent the interests of certain sectors within the commercial fishing sector, for example they have engaged strongly with the scallop sector and with WFA, though not IFGs or conservation NGOs. Engagement with fisheries sectors would not necessarily (and has not) benefitted marine conservation (because that is not a target on the sector's agenda), which requires other action including effective and meaningful engagement with the conservation sector. The makeup of the IFGs, with only one independent representative from the conservation sector (NRW is not independent but acts as the scientific advisor), has prevented meaningful discussion of the issues linking improved marine conservation with long-term improvements to commercial fishing stocks.

The suspension of IFGs is an acknowledgement that they have failed to meet their objectives. The IFG minutes of all regions demonstrate clearly that they have persistently failed to act as an effective mechanism to transmit information from the fishing industry and other sectors upwards, or that they can enable those stakeholders to contribute effectively to the numerous consultation documents that have been sent out from the WG. Where consultations have occurred, little feedback has been provided as to which ideas that were transmitted upwards have been adopted, leading to a sense of frustration and a feeling that the participation undertaken has been at best tokenism. The lack of direction of IFGs is also apparent, but where it has been pointed out by members that this could have been overcome by annual plans and reviews, such ideas have been ignored. This contrasts strongly with the IFCA model which contains these two relatively simple but effective management tools to improve communication and monitor progress.

Linked to this is the bureaucratic nature of decision-making which did not enable a reaction to often quite rapidly changing environmental factors, leading to missed opportunities, for example in the cockle fishery, but with wider impacts too.

Other weaknesses in the IFG system included the fact that whilst it was described initially as a participatory process, analysis of the Mid-Wales IFG minutes demonstrates that over 90 per cent of the issues dealt with were initiated by the WG M&FD. Some of the issues which were of value only to specific regions of Wales were nevertheless discussed in all IFGs. This demonstrates that to a certain extent, the scale at which management was being undertaken fails to replicate the scale at which specific resources are being used.

In addition, both IFGs and WMFAG were created to be advisory-only bodies and this lack of influence has undermined the commitment of many to the process, especially when ideas transmitted upwards appear to have fallen into a communication black hole.

There also appears to have been poor progress on liaison with neighbouring IFCAs. This has, until the summer of 2017, prevented discussion of cross-border issues relating to legislation, fisheries enforcement, sharing of resources and of ideas, and will also slow down co-ordinated marine planning in the border zones. The WG M&FD seems to be outside what has become a flourishing exchange that has benefitted research and fisheries management, even though IFCAs have approached the Division with no effective response.

Whilst it is true that the period over which these changes have occurred has been exceptionally busy with a range of legislative drivers increasing demands on resources, this is equally true for the English IFCAs. However, the weaknesses revealed in the Welsh system do not appear as critical for them. Almost eight years after the change took place, the M&FD has failed to improve significantly its understanding of the state of the marine environment, but despite this has tended to make decisions that favour economic goals over longer term environmental goals, often in the face of considerable opposition, including from commercial fishermen. Whilst the decision to allow the return of scallop dredging into parts of the Cardigan Bay MPA was based on supposedly independently verified scientific evidence, it fails to appreciate the commercial and intrinsic value of restoring a degraded marine environment and, in favouring commercial fisheries, it undermines other sectors whose commercial value to the Welsh coastal economy may, in the long term, be far greater³⁵⁵. The fact that this decision was taken without effective public consultation or even discussion with the IFGs is also significant³⁵⁶.

Whilst the M&FD has taken on extra responsibilities compared to SFCs, it also appears to have received extra funding in real terms³⁵⁷. However, despite this, the perception of all major stakeholders is that there are insufficient resources to deliver effective inshore fisheries management. The new regime has therefore achieved the dubious honour of simultaneously receiving more resources than previously, yet, due to poor management, of providing a less effective service than had been achieved under the SFCs despite the additional powers provided by MCAA.

A key weakness appears to be the inability to learn from mistakes. For example, the lack of any transparent review of the causes of the suspension of IFGs, a key component of the original WG management structure, means that such failures are more likely to be repeated. This suggests a weakness in the culture of the WG and M&FDs' management philosophy that appears to consider outside interest in its workings as at best an inconvenience and at worst as a challenge to its authority. It is a far cry from the 2009 statement by the Minister that *"I have now made a commitment to report annually to the Assembly on the exercise of my fisheries functions. I believe this will provide greater transparency in the way that we manage fisheries in Wales"* and points to a lack of confidence at the heart of the management structure.

Finally, the decision to leave the EU has several implications for the Welsh inshore fisheries sector and the environment on which it relies. Ninety per cent of Welsh shellfish are claimed to be exported, most to the EU³⁵⁸. How this will impact upon trade is yet unknown, but increased border checks, tariffs or other financial and bureaucratic obstacles are bound to have an impact on the industry. However, depending on the degree to which EU legislation is retained, leaving

³⁵⁵ Since all fishing has been banned in the British Lundy Island No Take Zone, a small four square kilometres marine protected area set up in the Bristol Channel in 2003, tourism has doubled. The fishing industry also benefits from the Lundy No Take Zone: lobsters have become more abundant and their average size has increased, within and outside the protected zone.

<https://www.iucn.org/content/protecting-oceans-makes-economic-sense>

³⁵⁶ There is no record that the Mid-Wales IFG debated the evidence on which the re-introduction of scallop fishing in the Cardigan Bay SAC was based before the decision was taken in the autumn of 2016. (All Mid-Wales IFGs Minutes). (FOI request)

³⁵⁷ Though proportionately less than is available in England

³⁵⁸ The New Under Ten Fishermen's Association (private correspondence)

the EU may ultimately absolve the WG of meeting its obligation under the MSFD to achieve GES by 2020. This is feared by marine conservation interests who believe that without this incentive the WG's tendency to favour short-term economic over longer term environmental goals will prevail. This may be unfounded, but decisions such as that affecting the Cardigan Bay scallop fishery suggest that key decision-makers lack a vision to do more than maintain what is left of what even many commercial fishermen acknowledge is a degraded marine environment. Thus, the ambition to achieve:

1. Better evidence and understanding
2. Sustainable, local, shared management
3. Increased profitability

as set out in the Welsh Marine and Fisheries Strategy appears to be failing to meet expectations at all three levels and appears to require a fundamental reconsideration of the means by which the strategy will be delivered, the resources which will be required, and the goals which it sets, of which the most fundamental should be the need to acknowledge that any long-term profitable fishing industry requires short-term constraint and an acknowledgement that the current degraded marine environment cannot support a profitable fishing industry in the long run.

13. WELSH INSHORE MARINE AND FISHERIES MANAGEMENT: RECOMMENDATIONS FOR IMPROVEMENTS

National Assembly for Wales should:

1. bring forward legislation to integrate fisheries and conservation management:
 - a. Impose duties on the managers of inshore fisheries to ensure marine nature conservation objectives within the area are met
 - b. Make explicit provision for fishery managers to participate in the development and implementation of management schemes for MPAs; demonstrating genuine commitment to “integration” by creating a duty
 - c. Create a statutory footing for (local) stakeholders

Welsh Government should:

2. Set out a clear set of actions necessary to restore the marine environment to an acceptable level above its current degraded state, thus contributing to delivering Wales’ commitments to the UK’s High-Level Objectives, Marine Policy Statement and a coherent network of well-managed MPAs.
3. Undertake an assessment of the environmental, economic and social benefits of restoring inshore marine environments to the acceptable levels identified in point 20.2.
4. Produce an annual marine management plan as currently produced by IFCAs
5. Produce an annual review of the plan to enable progress to be monitored and evaluated.
6. Identify areas of the inshore marine environment where co-management may be initiated between commercial fishermen, recreational fishermen, marine conservationists, other recreational users such as divers, NRW and the locally devolved M&F officials who are not under the direct control of the Secretary of State, e.g. where there are identifiable users of a fishery; where non-users are, or can be easily excluded from using the fishery, and where the main commercial species are relatively immobile so that the benefits of the improved management are clearly identifiable by the co-managers. The Lyme Bay example is a possible model.
7. Increase the proportion of the total budget from policy making to operational duties especially committing a higher percentage of the total budget to enforcement.
8. Designate Marine Conservation Zones and utilise existing powers under MCAA to fulfil the duty to create a network of marine sites and begin the public consultation and evidence based process to determine suitable locations for MCZs to be established, including identifying whether any of these should be no take zones.
9. Create a no-take zone for all species in the Skomer MCZ to provide a testbed and marine sanctuary that will have both scientific and recreational benefits within the zone, and to assess the economic benefits outside the zone so that if these benefits outweigh the short-term costs, to identify other no-take zones which may deliver similar benefits in the future.
10. Initiate and or respond more quickly to cross-border initiatives.
11. Increase the representation of recreational angling on whatever successor is named for IFGs to reflect their relative importance to the Welsh coastal economy.

12. Enable regional managers to react quickly to local factors that affect particular stocks, e.g. cockle fisheries in the Burry Estuary, Three Rivers region and the Dee Estuary.

APPENDIX 1. PROPOSAL FOR THE FUTURE MANAGEMENT AND ENFORCEMENT OF SEA FISHERIES IN WELSH WATERS CONSULTATION LETTER

9 June 2008

Dear Stakeholder

A PROPOSAL FOR THE FUTURE MANAGEMENT AND ENFORCEMENT OF SEA FISHERIES IN WELSH WATERS

1. This consultation document seeks your views on a proposal by Elin Jones, Minister for Rural Affairs, that the Welsh Assembly Government assumes full responsibility for the management and enforcement of sea fisheries around the Welsh coast. In preparing this document we have taken account of issues raised by key stakeholders during a series of pre-consultation meetings.
2. The management and enforcement of fisheries in Wales is undertaken by Welsh Assembly Government Fisheries Inspectors, 2 Sea Fisheries Committees (SFCs) and the Environment Agency (EA). SFCs were originally established through the Sea Fisheries Regulation Act 1888, since replaced by the Sea Fisheries Regulation Act 1966. In the south there is the South Wales Sea Fisheries Committee and in north the North Western and North Wales Sea Fisheries Committee which covers the north Wales coast and part of the English coast as far north as Cumbria. The EA acts as a SFC in the Dee Estuary in the north and the Severn Estuary in the south.
3. The Welsh Assembly Government Fisheries Inspectors operate under EU, UK and Welsh fisheries legislation and are supported by the Royal Navy Fisheries Protection Squadron and aerial surveillance. SFCs are joint committees of local authorities and are empowered to make byelaws for the management and conservation of their districts' fisheries and marine environment, and they also enforce some UK and EU legislation. Their byelaws can regulate fishing activity such as use of gear, fishing seasons, minimum landings sizes, and the byelaws have to be submitted to Ministers for consideration and as appropriate confirmation before being enacted. The EA has similar powers.
4. The structure and role of SFCs in England and Wales has been considered in a number of reports in recent years, including the Prime Minister's Net Benefits report (March 2004), the DEFRA report on the Review of Marine and Environmental Enforcement (November 2004), and the English Inshore Fisheries Working Group Report (March 2005). All three reports made recommendations for the modernisation of the inshore fisheries management system in England and Wales, and examined a number of options including the possibility of a single marine management agency which could combine the SFC functions with the functions of the DEFRA Marine and Fisheries Agency (MFA). It was accepted throughout these documents there is a need to improve the management and enforcement of inshore fisheries.
5. The production of these reports prompted the Welsh Assembly Government to reconsider its responsibilities and obligations for fisheries in the marine environment, particularly in respect of its EU obligations for compliance with the various environment and habitats directives in relation to fishing activities. Although ultimate responsibility for these obligations rests with the Welsh Assembly Government, SFCs are obliged to observe them when managing the fisheries. There have been occasions when the SFCs have interpreted the obligations in a way which was not acceptable to the EU Commission, and given that Ministers have no powers to instruct SFCs as to their activities, the Commission has questioned the Assembly's lack of absolute control of fisheries in Wales.

6. This relates in particular to instances where some SFCs have failed to act to prevent possible damage, from fishing operations, to habitats or species in areas designated under the Habitats Directive. Some SFCs would argue that they are not properly funded to carry out their management role but the real problem is that there is an absence of clearly defined duties for SFCs and this means that it is difficult to hold them accountable for any inaction. The result is that if a SFC fails to carry out its EU obligations, it is the Member State (in Wales the Welsh Assembly Government) which is held accountable and which has to defend any European Court action.
7. Therefore, the Welsh Assembly Government proposes to establish a management and enforcement regime which ensures it meets with all its statutory obligations and is uncomplicated and transparent. In developing such a regime 3 main phases have been identified to achieving this:
 - First phase – The transfer of the DEFRA Marine & Fisheries Agency (MFA) previously working in Wales into the Assembly Government. The administrative responsibility for the provision of fisheries enforcement capability of EU, UK and national legislation had historically been provided by DEFRA (and MAFF before that) on behalf of the Assembly Government, through an agreement made in 1979. The transfer was completed on 1 April 2008 and the Assembly Government is now administratively responsible for the fisheries inspectorate.
 - Second phase – This concerns the proposal to create a ‘Welsh Fisheries Zone’. The Assembly Government presently has competence for fisheries matters within the territorial sea adjacent to Wales (i.e. out to 12 nautical miles from baselines). The proposal is to create this zone which would extend Welsh Assembly Government competence for fisheries to the median line with the Republic of Ireland to the west, to the Isle of Man in the north, and to a small area in the southwest. The proposal is currently out to consultation with all key fisheries stakeholders in the UK and is due to end on 6 June 2008.
 - Third phase – The main focus of this consultation is in respect of the future of inshore fisheries management and enforcement and subsequently the future of Sea Fisheries Committees currently operating in Wales.
8. In considering the future of inshore fisheries management and enforcement the Minister considered four main areas concerning the need to change. These are:
 - the purpose and duties of inshore fisheries management and the jurisdiction within which management and enforcement of fisheries should operate;
 - the powers of inshore fisheries management bodies to make and enforce local rules in the form of byelaws;
 - the institutional options for future inshore fisheries management bodies; and
 - the degree of supervision which should be exercised over those bodies.

(A) Purpose, duties and jurisdiction of inshore fisheries management

9. Questions related to the purpose, duties and jurisdiction of inshore management bodies arise whatever the institutional structure.
10. The purpose of inshore fisheries management currently performed by SFCs is not sufficiently defined and SFCs are not under any clear duty to carry out that purpose; their powers are permissive. We consider that inshore management bodies should have clearly defined duties related to achieving sustainable development of fisheries and the marine environment generally within their jurisdiction, in respect of fish stocks, the impact of fishing on the marine environment and the economic development of the fishing industry. This would be consistent with and flows from the aim and objectives proposed by the various reviews. Clearly defined duties and responsibilities for inshore managers would make them more accountable.

11. Responsibilities also need to be better defined in areas where inshore fisheries management functions overlap with functions of other bodies. One such area is health and safety, where we would advise against seeking specific new powers for inshore fisheries management bodies, but rather look to provide broad discretion to impose conditions on permits or licensing schemes, to comply with relevant health & safety legislation.
12. On jurisdiction, SFCs currently have management responsibilities out to 6nm adjacent to the Welsh coast. The committees are of the view that the seaward limit under a new inshore management system should be extended to 12nm. This would correspond conveniently with the Assembly's current responsibility for the sea out to 12 miles but, however, given the aim of the consultation on the proposed Welsh Fisheries Zone, and that fisheries do not recognise an arbitrary boundary set by a 3/6/12 mile limit, there is a need for a management regime which operates throughout the area of Welsh fisheries. In this respect, fisheries managers would then need the authority and powers to enforce the full range of Common Fisheries Policy requirements. However, we believe the landward limit - currently the high water mark in many cases - should be extended inland so that inshore managers can pursue infringements away from the coast (for example, where undersize cockles are transported inland).

(B) Institutional options for future inshore fisheries management body

13. *Net Benefits* and the *Bradley Review* considered the need for institutional change. At the most ambitious, abolishing SFCs and transferring existing responsibilities for inshore fisheries management to a national body such as the EA (the Agency responded positively to that Bradley Report recommendation) to DEFRA's MFA (on an agency basis) or to a Marine Management Organisation (MMO); all these options were equally applicable in England and Wales. Any option that involved retaining SFCs in some shape or form would be more straightforward but would not fully meet the Welsh Assembly Government aims for a transparent and uncomplicated regime of fisheries management and enforcement.

(C) Powers to make and enforce regulations

14. The powers needed by inshore fisheries managers to make and enforce regulations will need to be updated under all institutional options. However, analysis of what this role involves in relation to existing legislation suggests that the changes in powers needed are not that great. There are a few gaps in existing legislation in relation to issues like charging, data requirements, effort limitation and research, but what is needed is in large part clarification of existing legislation and making explicit what is currently implicit.

(D) Degree of supervision

15. A decision is needed on whether provision is required for supervision of inshore managers. Scope for supervision by the Assembly Government could improve the consistency and effectiveness of inshore management arrangements and help address some of the current criticisms of SFCs.
16. One solution would be for Ministers to take powers to intervene, for example to instruct an inshore fisheries manager to make a byelaw. A less interventionist solution would involve giving inshore fisheries managers more responsibilities and increasing their accountability, for example by setting clear duties and by requiring them to undertake Regulatory Impact Assessments (RIAs) and full consultation in respect of proposed byelaws.

Options

17. In progressing a decision on the future of inshore fisheries management, the Minister considered 3 main options, which are:

- **Option 1** - Modernise SFCs and give some role of supervision to central government whilst retaining local input to decision making.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Scope to address some of the current problems with SFC performance through legislative changes without major institutional upheaval. • Retains local input to decision making. • Retains inshore managers whose sole focus is inshore issues. • Consistent with DEFRA approach. 	<ul style="list-style-type: none"> • Does not provide a comprehensive management strategy for inshore waters. • Relies too heavily on the ability of local authorities to adequately fund SFCs. • Likely to represent a new burden on local authorities that would need to be funded. • Would not address the calls for uniform management throughout Welsh waters. • Will require some legislative changes but these would be accommodated in the Marine Bill. • Would require some new set up costs for a new supervisory role for Welsh Assembly Government.

- **Option 2** - Abolish SFCs and transfer responsibility for inshore fisheries management in Wales to the EA.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Simplify enforcement. • Could make better use of existing resources and reduce duplication of effort. • Strengthen the opportunity for operational efficiencies. • Reduce the number of organisations the fishing industry has to deal with. 	<ul style="list-style-type: none"> • Inconsistent because although the EA has indicated an interest in assuming responsibility it would be on a Wales only basis. Difficult given that the Agency operates in both Wales and England. • Risk that complex legislative changes would not be delivered against the Marine Bill timetable. • Would require some new set up costs. • Fails to answer the criticism that where the EA currently acts as an SFC, its priorities rest with salmonids rather than all marine species.

- **Option 3** - Bring the function in-house to create an all Wales fisheries management and enforcement body.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Would provide a coherent approach to managing Welsh inshore waters. • Would enable Welsh Assembly Government to exercise a coordinated all Wales control over local inshore fisheries management. • In general, welcomed by the key stakeholders, including most of the Local Authorities and Welsh fishing industry. • Provides scope for better use of resources. • Local input into decision making would be via the industry direct, rather than relying, as now, on Ministerial appointees to the committees. • Annual running costs could be met from funds currently made available to local authorities in membership of SFCs. 	<ul style="list-style-type: none"> • Adverse reaction from Welsh SFCs. • Would require detailed negotiations with Welsh Local Government Association, although we believe that it would not be adverse to the proposal. • Would involve one-off set up costs which could be significant. • There could be occasions when Ministers are drawn into some local management issues. • Will require some legislative changes but these could be accommodated in the Marine Bill.

18. In England, DEFRA were faced with a similar decision on the future of inshore fisheries management and they decided to strengthen SFCs by giving them clear terms of reference and revised strengthened powers to do the job. The proposal in the Marine and Coastal Access Bill, currently out to consultation, is to remove the 1966 Act and replace with new powers and obligations through the Marine Bill to create Inshore Fisheries and Conservation Authorities.
19. The DEFRA decision is based in part on the fact that England has two distinct fleets, the inshore fleet and the offshore fleet which require two distinct management and enforcement regimes. In Wales the fleet is predominantly an inshore fleet and therefore the aim of one management and enforcement body is far more appropriate and attainable than in England.

Proposal

20. Having considered the various options the Minister is proposing that all existing management and enforcement functions are brought in-house. This would result in the abolition of both Welsh Sea Fisheries Committees and the revocation of some sea fishery powers currently vested in the Environment Agency. The new regime would be part of Welsh Assembly Government's current Fisheries Unit, and would look to integrate current SFC functions with those of the existing sea fisheries enforcement team. It would be the intention of the Welsh Assembly Government to retain staff currently employed by SFCs and the integration would be in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006, otherwise known referred to as TUPE. As well as protecting employment this would also ensure that the vast expertise which such staff possess, would be retained.

Funding

21. SFCs are currently funded by levy on the constituent Local Authority members. The local authorities themselves are funded through a combination of revenue support grant (RSG) provided by the Assembly Government and council tax raised locally. The amounts allocated to SFCs in the local authority settlements are not ring fenced but are notionally identified as part of the process of determining the distribution of the RSG. As local authorities would be losing the SFC burden then the proposal would be that the RSG element identified for SFCs would be retained by the AG to fund the new organisation. The EA is funded in part by Government Grant in-aid and by income from sales of inland permits. It is proposed that the Governments grant in-aid contribution for this work would again be retained by the Assembly for the new organisation.

Legislation

22. SFCs and the EA currently operate under local byelaws which have to be confirmed by the Minister before they can be enforced. The proposal is that those byelaws would need to be converted as appropriate into Welsh Statutory Instruments which would be enforced by the existing staff and by the integrated staff who have or will attain British Sea Fishery Officer (or equivalent) powers which will enable them to enforce all EU, UK and Welsh fisheries legislation within Welsh waters.
23. Another aspect of legislation which needs to be considered is the future of Regulating Orders. These are Orders which in the main have been granted to SFCs and EA to regulate shellfish activities within specified areas. The EA and the local authorities might well wish to retain their responsibilities for these fisheries but if that is not the case then we would look to other organisations such as industry representation groups to perhaps take forward that responsibility. We will also be investigating what provisions might be available which would allow the Welsh Assembly Government to undertake those local management activities.
24. The EA currently has powers under the SAFF 1975 to manage and enforce salmonid legislation out to 6 nautical miles and the Welsh Assembly Government proposal is that the EA would retain these powers in Welsh waters.

Powers

25. The powers required to enable the proposed changes are either covered by current legislation or will be derived from new powers proposed in the Marine and Coastal Access Bill.

Your views

26. We would be grateful for your views on:
- the proposal for the Welsh Assembly Government to assume full responsibility for the management and enforcement of sea fisheries around the Welsh coast;
 - the proposal that the Environment Agency retain its powers for salmonid (Salmon and Trout) fisheries management out to 6 nautical miles; and
 - the future management of Regulating Orders;
27. This consultation has been sent to all key stakeholders in Wales (see Annex 1), and appears on the Welsh Assembly Government website.

How to respond

28. We would prefer to receive responses by email to:

FisheriesMailbox@wales.gsi.gov.uk

but are also happy to receive comments by post to:

Stuart Evans

Welsh Assembly Government
Fisheries Unit
Department for Rural Affairs
1st floor – North Wing
Cathays Park
Cardiff
CF10 3NQ

29. The Welsh Assembly Government intends to publish the responses to this document. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us.

Deadline for responses: 4 August 2008

Yours sincerely,

Stuart Evans
Fisheries Unit

APPENDIX 2. RESPONSES³⁵⁹ TO THE *FUTURE MANAGEMENT AND ENFORCEMENT OF SEA FISHERIES IN WELSH WATERS* CONSULTATION PROCESS AS SUMMARIZED BY WG

- A. Cardigan Bay SAC Relevant Authority Group: “Has questions relating to how WG intends to be represented on RAGs throughout Wales, they feel that if SFCs are replaced by WG then a similar arrangement is necessary. 2). Questions how WG intends to fund the work of the RAG and management scheme”
- B. Carmarthen Bay and Estuaries EMS Relevant Authorities Group:
1. “If Option 3 is adopted then all RAGs will lose essential membership of SFCs.
 2. Whilst WG, is a competent authority under Regs 6 of Habitats Regs, it could not fulfil the function of a RAG for a European marine site under Regs 5, even though it would be undertaking the management functions of the existing fishery management RAG.
 3. Whilst it is possible that amendments to Habitats Regulations could be made to expand definition of 'RA', it is unclear if WG given its legislative and governing role, to act as a 'RA'.
 4. Please advise on:
 - (i) what account WG has taken of the need for appropriate fisheries manager to continue to participate in RAG working
 - (ii) WG's understanding of the legal position regarding assumption of the role of 'RA' by WG, with or without any necessary amendments to the appropriate legislation.
 - (iii) If there is indeed no legal impediment in principle to WG or its fisheries department, taking on the role as RA, but legislative amendments to enable it are necessary, what arrangements are being put in place to secure such amendments?”
- C. Countryside Council for Wales: “The framework structure does not give details of how new arrangements will work: Examples (5.1) European Marine Sites – If fisheries management brought in-house then changes needed would include –
1. WG becoming a 'relevant authority' not a competent authority so that current management arrangements on EMSs are maintained.
 2. Transferring of Schemes of Management SACs transferred to WG. ”
- D. Wales Coastal & Maritime Partnership: During their meetings to discuss the consultation they wondered how “WAG will combine fulfilling its statutory obligations under the Habitats regulations
- 1 as already being one of competent authority and
 2. as a relevant authority in preparing and delivering sites’ management schemes.”

³⁵⁹ These are the only responses we were able to access.

APPENDIX 3. WELSH GOVERNMENT RESPONSE TO THE CONSULTATION RESPONSE

12 September 2008

Dear Stakeholder

THE FUTURE MANAGEMENT AND ENFORCEMENT OF SEA FISHERIES IN WELSH WATERS

In June this year, we wrote to you seeking your views on a proposal by Elin Jones AM, Minister for Rural Affairs, that the Welsh Assembly Government assume full responsibility for the management and enforcement of sea fisheries around the Welsh coast. Following that consultation the Minister announced today that she has decided to adopt that proposal as Government policy, and her aim is that a new management and enforcement regime will be in place by April 2010.

The consultation raised a number of concerns and in announcing her decision, the Minister was keen to allay some of the fears expressed. Firstly she wished to make it clear that she valued the vast experience which the Sea Fisheries Committees (SFCs) and their officers have, and she would look to retain that, along with the officers' close working relationship with fishermen, in the new regime. She also announced that the new Fisheries Unit will have legislative powers similar to those which the SFCs have at present, and will replicate the responsibilities which the SFCs and their successor organisations might have for the wider marine environment; the necessary additional powers will be secured through the Marine Bill.

The consultation also raised concerns about the Assembly Government being able to have local input similar to that provided by SFCs. The Minister believes that the involvement of local interests, in the formulation of policy and regulation, is vital, and she will be keen to hear from key stakeholders about how we might maintain close links so that local voices are heard, to ensure openness, transparency and inclusivity in policy and regulatory development.

We have included with this letter a summary of the comments received from the consultation, and the Welsh Assembly Government response to those comments. Information will also be available on the website at

<http://new.wales.gov.uk/topics/environmentcountryside/foodandfisheries/fisheries/?lang=en>.

Over the next few weeks officials will be contacting key stakeholders with the aim of starting a dialogue about the new changes, and to discuss any issues raised during the consultation.

Yours sincerely, Graham Rees, Head of Fisheries Unit

Summary of Objections raised during the consultation on the future management and enforcement of sea fisheries in welsh waters

Resources

Objection	Response
Would there be sufficient resources for WAG to take on these responsibilities?	Funds currently utilised by Local Authorities through the Revenue Support Grant to fund SFCs, would remain with WAG to fund new inshore fisheries activities. There would be initial set up costs for WAG, but there could be savings from increased efficiency and avoiding duplication.
Will the creation of the new Welsh Fisheries Zone divert funds from inshore fisheries management?	No, enforcement will continue as currently with WAG making a proportional contribution to the Royal Navy. The creation of the Fisheries Zone will mean that WAG Fishery Officers will be able to dictate more clearly what the Royal Navy should be enforcing in this area.
Funding for the in-house model would be 10% lower than existing funding for SFCs, whereas funding for IFCAs in England will be double the current level.	These are speculative figures provided by the SWSFC and do not reflect a like for like comparison.
The in-house option will be less cost effective than IFCAs and there would be a greater risk of budget cuts.	The in-house option would be just as cost effective as SFCs, and possibly more so, due to avoiding duplication. However, this is not primarily a cost-saving exercise.

Legislation

Objection	Response
When SFCs are abolished, byelaws could be lost.	There will be a 'savings clause' in the Marine Bill to ensure all current SFC byelaws transfer to WAG (or to IFCAs). Before implementing a new regime, WAG would review all byelaws with stakeholders and enforcement staff to assess the need for amendments, revocations or new byelaws.

Concern that there is not sufficient time for necessary changes to be made to the Marine Bill.	WAG officials have looked at the Marine Bill in depth with lawyers and are satisfied that they have highlighted all the necessary provisions for whichever option the Minister chooses.
If local legislation is made by Ministers through Statutory Instruments rather than	Local politics is already important to Welsh Ministers- local issues are the most important issues. Statutory Instruments will allow more
byelaws, then Ministers could be drawn into local politics, which could cause a conflict of interest.	debate and public scrutiny.
Insufficient consideration given to Regulating Orders. LAs or the EA would not represent the industry in this regard. Also concern over what would be possible if WAG were both grantor and grantee of Orders.	One of our aims in the consultation was to gather stakeholder feedback on the future of Regulating Orders. We will consider comments before making a final decision on this.
Some respondents wanted clarification of the claim in the consultation that SFCs had failed to properly to prevent damage in areas designated under the Habitats Directive.	This relates to a specific case in 2000 when the South Wales Sea Fisheries Committee authorised dredging within parts of the Carmarthen Bay pSAC and the Pembrokeshire Islands cSAC. It was believed that these actions would adversely impact a colony of Scoter Ducks contravening the Habitats directive 92/43/EEC and birds directives 79/409/EEC. This case was dropped by the European Commission after the introduction of an Order under sections 5, 5A and 15(3) of the Sea Fish (Conservation) Act 1967 to prohibit the use of hydraulic dredging to recover bivalve molluscs in the area of Carmarthen Bay.
Statutory Instruments can only regulate boat fishing and not fishing from the shore.	Officials and lawyers are looking to amend this through the Marine Bill.
Transferring Several and Regulating Orders to IFCAs would be straightforward, but transferring to WAG would be a slow process.	This is not the case. Each would cause problems but we are addressing these through the Marine Bill.

How will WAG treat the end of the NWNWSFC quadrennial period in June 2009? If membership of the Committee were to be changed, the 1999 NWNWSFC Order will require amendment.	Plans are in hand in both England and Wales to roll over appointments until such time as any new organisations are put in place.
Some concern over prospect of industry management of Regulating Orders.	WAG is considering a range of options for the future of Regulating and Several Orders and will consult further with stakeholders on this.
Some respondents felt that WAG already has powers to step in if SFCs do not fulfil obligations. This issue could be addressed through clear guidance from WAG to SFCs/IFCAs.	WAG does not have powers to direct SFCs (or IFCAs); the only powers would be to override legislation by implementing a Statutory Instrument, or to revoke IFCAs. This is not adequate for WAG's needs; therefore the in-house option is preferred.

Expertise / Stakeholder engagement

Objection	Response
Concern that WAG model will not have the same kind of stakeholder involvement and influence that SFCs have.	With the in-house model, an Advisory Group will be set up, consisting of fishermen, environmental interests, local authorities and other relevant stakeholders. The Committee will consist of some given seats for key stakeholders, as well as a number of seats selected through open competition.
Some respondents did not accept that a WAG enforcement body would be more accountable than SFCs.	SFCs are currently accountable to no one – they are stand alone Committees with certain obligations. The same would be the case for IFCAs. With the in-house option, the Minister would be fully accountable for all decisions.
Concern that this proposal is all about WAG 'tightening the reins'.	WAG needs more control over inshore fisheries management and enforcement to ensure EU obligations are met. This is one of the reasons for the WAG proposal. Also, if WAG were to implement IFCAs, it would want a clause to allow it to direct IFCAs, a clause not currently proposed for IFCAs in England.

Views of Local Authorities should be considered.	In initial planning stages, WAG contacted LAs about modernising SFCs, many were not prepared to take on new responsibilities and many support the WAG proposal. WAG feels it would be difficult to get LAs to fully engage with the creation of IFCA.
Concern that the Minister does not have the same level of knowledge as the Committee and some issues will be politicised.	We would hope to retain the expertise of the SFCs in a new Advisory Committee which would provide advice and guidance to the Minister. The Minister would be unlikely to go against the views of the Advisory Committee.
Has the proposal to remove a function from local government and transfer it to WAG been tested against the European Charter of local self-government to which the UK is a signatory?	This charter protects the powers of Local Authorities for self-government. However, the majority of Local Authorities which responded to the consultation support the WAG proposal; 7 in support, 4 against. (SWSFC Member LAs: 3 for, 1 against, NWNWSFC Member LAs: 2 for, 2 against, other LAs: 2 for, 1 against).
Concern that proposal goes against other European member states, especially Scotland, which is moving away	Current WAG policy reflects a desire to bring external agencies in e.g. the Wales Tourist Board and the WDA. However, there will be local input into decision
from centralised government.	making through an Advisory Group, and enforcement will be undertaken through regional offices.
Good that WAG recognises level of expertise within SFCs, but TUPE will not ensure staff retention. This is serious in light of loss of experienced WAG staff due to relocation.	WAG wishes to retain all SFC staff, but cannot guarantee that they will choose to stay. This would also be the case with the IFCA model.

Why not follow the IFCA model?

Objection	Response
Concern that the merits of Option 1 in the consultation (i.e. the IFCA model) had not been fully considered.	The IFCA model has been fully considered and the Minister reached the view that bringing the SFCs in-house would be more appropriate in Wales than following the IFCA model. Also, in the initial stages of the process WAG received negative feedback from Local Authorities about the IFCA model. If we adopt the IFCA model in Wales it would be essential to have Local Authorities fully on board, therefore this model could be difficult to implement in Wales.
Why is WAG not in favour of the same approach as DEFRA, i.e. IFCA's?	As above. Also, the IFCA approach does not grant WAG the level of control over inshore fisheries that it requires. In England, inshore fisheries make up a small part of the overall industry, whereas in Wales the inshore fisheries are the major part of the industry, therefore WAG wishes to closely manage these fisheries.
Some respondents were involved in reviews and stakeholder discussions which led to the development of the IFCA model. They feel confident that this would be the most effective model.	WAG feels that the IFCA model is not the most appropriate model for Wales, for the reasons stated above.

Organisation of the new structure

Objection	Response
Will existing SFC vessels be kept?	If WAG goes ahead with the proposal, it will undertake a full analysis of existing use of vessels, needs, costs, etc. and ensure it has sufficient patrol vessels to effectively enforce legislation.
How does the proposed in-	Currently, some fishermen are confused about

house structure improve transparency and accountability?	which organisations they should contact. With the WAG proposal there will be a single point of contact for fishermen – the Fisheries Unit. Also an Advisory Committee will be formed to ensure local expertise feeds into decision making.
No details in the consultation on input from local fishermen, location of offices, costs, etc.	After a final decision has been made, more detailed analysis will be provided. WAG will work in consultation with stakeholders to form a detailed plan for implementation of the chosen option.
How will the new structure be represented on SAC Relevant Authority Groups? WAG will need to be a Relevant Authority, not just a Competent Authority.	There is no reason why WAG could not be a member of these groups.
How will WAG fund the Relevant Authority Group and management scheme?	There is no requirement for any organisation to fund this group.
Will environmental protection be integrated into the new management process?	The WAG proposal will ensure clearly defined roles and responsibilities in terms of environmental protection and regulation of fishing.

Consultation process

Objection	Response
Not enough detail in the consultation document to allow an informed decision. There should be an accompanying Regulatory Impact Assessment.	We acknowledge that the consultation paper was lacking in detail. The main aim of the consultation paper was to garner views on the principle of the WAG proposal. More detailed analysis of costs, benefits, etc. will be undertaken after a final decision has been made.
Some objection to the claim in the consultation that many from the fishing industry support the WAG proposal.	Responses from the fishermen were mixed, with slightly more against the proposal than for it. The majority of respondents agree that the SFCs need to be modernised in some way.
Some felt the consultation period was too short and there was insufficient detail to provide a fully informed decision within the time.	The consultation period was shorter than usual because sufficient time was needed for officials to ensure that necessary provisions are included in the Marine Bill to implement a change.

Concern that decision had already been made before the consultation.

This is not the case. The Minister will fully consider all the evidence and consultation responses before making a final decision.

APPENDIX 4: CONSULTATION ON THE FUTURE MANAGEMENT AND ENFORCEMENT OF SEA FISHERIES IN WELSH WATERS; ORGANISATIONS CONSULTED

Anglesey And Gwynedd

Anglesey And North Wales Fishermen's Association

Anglesey County Council

Aquaculture Wales

Association Of River Trusts

Association Of Sea Fisheries Committees

B.A.S.S Stakeholder Project

Blackpool Borough Council

Blackrock Lave Nets

Blaenau Gwent County Council

Bolsach Boat Fishing Association

Bridgend County Borough Council

Burry Inlet Hand Gatherers Association

Caerphilly County Borough Council

Cardiff County Council

Cardigan Bay Fishermen's Association

Carmarthen Fisheries Federation

Carmarthen Fishermen's Federation

Carmarthen River Trust

Carmarthenshire County Council

Cefas

Centre for Applied Marine Sciences

Ceredigion County Council

City And County Of Swansea

Coarse Fish Farmers And Traders

Coastal Fisheries Conservation and Management

Coleg Menai

Conwy County Borough Council

Conwy Mussel Fishermen's Association

Countryside Council for Wales

Cumbria County Council

Cyngor Gwynedd

Cyngor Sir Ynys Mon

Dee And Clyde LFG

Dee Fishery Association

Denbighshire County Council

Environment Agency

Federation Of Clwyd Angling

Federation Of Welsh Anglers

FERAC

First Nature

Flintshire County Council

Friends Of The Earth Cymru

Gower LFG

Gwynedd County Council

Inland Fisheries Stakeholder Group

Institute of Fisheries Management

Isle Of Anglesey County Council

Keep Wales Tidy

Lancashire County Council

Llanelli Town Council

Llansteffan Community Council

Llyn Aquaculture

Llyn Fishermen's Association

Llyn Peninsular Inshore Fishermen's Association

Marine Conservation Society

Marine Stewardship Council

Merthyr Tydfil County Borough Council

Metropolitan Borough of Sefton

Metropolitan Borough of Wirral

Milford Haven Shellfishermen's Association

Monmouthshire County Council

Myti Mussels Ltd

National Federation Of Fishermen's Organisations

Neath Port Talbot County Borough Council

Newport City Council

North Wales Wildlife Trust

North West And North Wales Sea Fisheries Committee

Oneida Viviers Ltd

Pembrokeshire Coast National Park Authority

Pembrokeshire County Council

Pembrokeshire Fisheries Development Association

Pembrokeshire Rivers Trust

Penclawdd Shellfish Producers Ltd.

Powys County Council

Rawlings Trawling

Recreational Sea Angling Stakeholder Group

Rhondda Cynon Taf County Borough Council

Rhyl Fishermen's Association

RNLI

RSPB Cymru

Salmon and Trout Association

Saundersfoot Fishermen's Association

Save Our Sharks

Sea Anglers Conservation Network (Wales)

Sea Fish Industry Authority

Seonie Nets Association

Shark Angling Club Of Great Britain

Shark Trust

Shellfish Association Of Great Britain

South & West Wales Fishing Communities Ltd

South East Wales River Trust

South Wales Sea Fisheries Committee

South West Wales Association of Sea Angling Clubs

Strategic Development Unit, FMDD

Taff LFG

Teifi Trout Association

The Carp Society

The Church in Wales

The Conwy Valley Fisheries & Conservation Society

The Lobster Pot

The Salmon & Trout Association

The Vale Of Glamorgan Council

The Wildlife Trust Wales

Three Rivers Estuary Action Group

Torfaen County Borough Council

Towy Coracle Association

Towy Coracles

Tyfi River Trust

United Usk Fishermen's Association

Usk LFG

Vale of Glamorgan County Borough Council

Visit Wales

Wales & West Coast Producer Organisation

Wales Environment Link

Welsh Carp Conservation Group

Welsh Federation of Coarse Anglers

Welsh Federation Of Fishermen's Associations

Welsh Federation Of Sea Anglers

Welsh Local Government Association

Welsh Salmon And Trout Association

Welsh Tope, Skate And Conger Club

West Wales LFG

Whale And Dolphin Conservation Society

Wrexham County Borough Council

WWF Cymru

Wye and Usk Foundation

Wye LFG